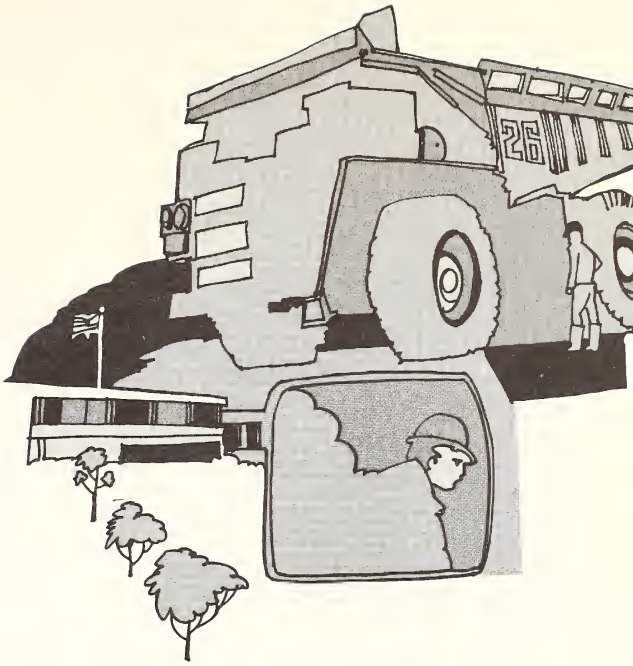
AUDIT INSTRUCTIONS FOR LOCAL PUBLIC WORKS GRANTS Under Tit

the Public Works Employment Acts of 1976 and 1977

Second Edition
March 1978

U.S. DEPARTMENT
OF COMMERCE

Economic Development



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Prepared by Office of A
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U.S. DEPARTMENT OF COMMERCE
Juanita M. Kreps, Secretary

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FOREWORD

It is the responsibility of every public official and government organization to account for the proper, effective and efficient use of Government funds. Accordingly, the Economic Development Administration and each of its grantees has this responsibility in accomplishing their assigned roles in furthering the objectives of the Public Works Employment Acts of 1976 and 1977. To aid in determining the degree with which individual grantees fulfill their responsibilities, audits will be made of most of the Local Public Works projects funded under these Acts. Inasmuch as auditors of public agencies and independent public accountants will be asked to perform many of these audits, these Instructions have been developed for their use.

Ward Miller, Jr.

Ward Miller, Jr.
Director for Local Public Works
Economic Development Administration

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AUDIT INSTRUCTIONS FOR LOCAL PUBLIC WORKS GRANTS UNDER TITLE I OF THE PUBLIC WORKS EMPLOYMENT ACTS OF 1976 AND 1977

I. INTRODUCTION

These instructions are designed to assist public auditors and independent public accountants in performing audits of grants approved under the Local Public Works Capital Development and Investment Program, (hereafter referred to as LPW) which is authorized by Title I of the Public Works Employment Act of 1976, PL 94-369 and by Title I of the Public Works Employment Act of 1977, PL 95-28 (See Appendix C). This program is administered by the Economic Development Administration (EDA), an agency of the U.S. Department of Commerce (DoC). These instructions include information pertaining to program background, a summary of the funding and administrative requirements of LPW grants, details concerning use of public auditors and independent public accountants, general audit instructions and specific audit requirements.

These audit instructions (hereafter referred to as a Guide) are not to be considered a complete manual of audit procedures nor should they supplant the accountant's judgment as to the work required to meet generally accepted auditing standards and to render informative reports. It is incumbent upon each accountant to revise specified procedures as needed to cover appropriately (i) variations in local conditions, and (ii) internal control strengths and weaknesses. Therefore, it will be necessary to modify, add, or delete audit procedures in given situations. The audit results will depend largely upon the initiative and resourcefulness of the accountant.

This Guide contains the DoC requirements for audits of LPW grants. The extent that (i) the grantee observes the criteria in this Guide in selecting the auditor, (ii) the auditor adheres to the scope of audit presented in this Guide, and (iii) the auditor's report includes the information described in this Guide, will determine whether the audit report will be acceptable to EDA. Otherwise DoC audit staff may need to do additional work to assure that the minimum requirements for audit of a governmental program are met.

All recipients of LPW grants are expected to have adequate accounting systems and are responsible to arrange for the required audit(s). However, some of the recipients may require and should obtain certain accounting advisory services at the inception of the project to assure that the accounting system and related internal controls are effective, that adequate records are maintained, and that grant funds are controlled and expended in accordance with the organization's prescribed management policies, grant provisions and EDA instructions. (See Section III D for a summary of the grant recipients' financial responsibilities.)

In many instances, the audit of State or local governmental units will be performed by public audit agencies. In cases where this is not possible or practical, the audit may be conducted by an independent public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States. (See Section IV. B.)

During development of the audit procedures discussed in this Guide, the Department of Commerce, Office of Audits conferred with representatives of the American Institute of Certified Public Accountants (AICPA) through its Committee on Federally Assisted Programs, with State and local government representatives of the National Intergovernmental Audit Forum and with EDA officials. The requirements established herein, however, are the responsibility of the DoC Office of Audits.

II. BACKGROUND INFORMATION

A. Background Information Applicable to the Act of 1976

1. Authority

Title I of the Public Works Employment Act of 1976, established the Local Public Works Capital Development and Investment Program, and has authorized grants to any State or local government for local public works projects that will stimulate employment.

2. Objectives

The purposes of this legislation are to provide:

a. Employment opportunities in areas of high unemployment through the expeditious construction or renovation of useful public facilities, and

b. A countercyclical stimulus to the national economy.

3. Availability of Funds

For this program $2.0 billion has been appropriated.

4. Eligible Applicants

Eligible applicants for this program are:

a. States

The several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

b. Local Governments

Any city, county, town, parish, or other political subdivision of a State (including general-purpose and special-purpose units of government and local school districts), and any Indian tribe.

5. Eligible Areas

The Act requires that 70 percent of all funds appropriated for this program be granted for projects submitted by States or local governments having unemployment rates in excess of the national unemployment rate.

The remaining 30 percent is to be available for public works projects submitted by State or local governments having unemployment rates which are less than the national unemployment rate.

6. Types of Grants

The types of grants available to State and local governments under this program are:

a. Direct Grants

100 percent grants for local public works projects on which construction has not been started.

In a few instances, the auditor may find other funds in addition to the EDA grant being used to finance a direct grant project. In these instances, the auditor should carefully examine the agreements

with all of the funding sources and advise the DoC Regional Audit Manager of his findings. The DoC Audit Manager will then provide supplemental instructions for auditing the LPW grant and for presentation of audit results in the report.

b. Supplemental Grants

(1) Grants to supplement other Federally-funded public works projects, in the amount necessary to make the Federal share 100 percent of the project cost, provided that the other Federal funds are immediately available and that construction on the project had not been started owing to a lack of funding for the non-Federal share.

(2) Grants to provide all or any part of the required State or local share (but not both shares) for the cost of a public works project on which financial assistance is authorized under the State or local law requiring such a contribution, provided that the financial assistance other than that being provided is immediately available and that construction on the project has not been started.

(3) In a few instances the grant agreements for supplemental grants provide that the LPW grant will furnish a certain percentage of the total acceptable costs of the project not to exceed a stated maximum dollar amount. An auditor of an LPW grant designated as supplemental (See Section II C) must determine whether the grantee used the LPW funds in accordance with the sharing requirements stated in the grant agreement. To obtain clarification of the sharing and audit requirements for each project of this type, the auditor should consult with the applicable DoC Regional Audit Manager. (See Section VII)

(4) For all supplemental grants the auditor must consider the audit requirements of the other funding sources.

7. Eligible and Ineligible Projects

a. Eligible Projects

The types of projects eligible for funding under this program are:

(1) Construction (including demolition and other site preparation activities), renovation, repair, and other improvements related to public works projects that have a local orientation. Such local public works projects include, but are not limited to, municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, and health, education and social service facilities.

(2) Public works projects authorized by other Federal acts.

b. Ineligible Projects

The following types of projects are not eligible for funding under this program:

(1) Projects that have as their principal purpose--or permanent effect--the channelization, damming, diversion, or dredging of any natural watercourse, or the construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site). Construction on natural watercourses that have already been diverted, dammed, and channelized would constitute an acceptable project if the final project result were the improvement of the natural flow of the entire watercourse. Thus, acceptable projects would include: dredging a previously diverted river; desilting an existing dam; temporarily diverting a river for the principal purpose of constructing a bridge; and constructing, reconstructing, or repairing a jetty in an area where beach erosion or storm damage has occurred.

(2) Projects on which construction is ongoing (i.e., on which a contract for construction has been awarded, notice to proceed or its equivalent has been issued or on-site labor has begun, whichever has occurred earlier).

(3) Projects requiring financial assistance in excess of $5 million, unless a waiver is granted by EDA.

(4) Projects estimated to take more than two years to complete.

(5) Projects for which this program's funds would reduce, diminish, or replace funds specifically budgeted and/or committed for the project by the State, local government, Indian tribe, or other Federal agency.

8. Types of Projects

a. Construction Contract Projects

Most LPW projects are expected to be accomplished by solicitation of bids and the selection of a contractor to do the work. EDA has issued a booklet entitled "Engineering and Construction Guidelines for the Local Public Works Capital Development and Investment Program," which contains EDA's requirements relative to advertising for bids, bid opening, award of construction contracts and the content of construction contract documents.

b. Force Account Projects

Force account projects are those which are accomplished by the grantee's own employees rather than engaging a contractor. For this type of project, EDA has issued a separate booklet entitled "Engineering and Construction Guidelines for Force Account Projects for the Local Public Works Capital Development and Investment Program," with which the auditor for such a project should be familiar.

c. Simultaneous Design and Construction (Fast-Track)

In some instances the design of the project may be only complete enough that some on-site labor can commence within 90 days after the date of the "Offer of Grant." These projects may be performed in separate steps as the design work is completed on separate elements of the project. In these cases the auditor must carefully review the grant documents, the Architect/Engineer contracts and each major action of the grantee to determine the extent to which design fees and other costs are eligible for EDA participation according to the grant terms. This type of project does not relieve the grantee of its obligation to commence on-site labor within 90 days from the date of grant offer.

d. Combination

Also, projects could be accomplished by any combination of the methods described above.

9. Department of Commerce Audit Policies

The Department of Commerce policies relating to audits of LPW projects are as follows:

a. Most LPW grants will be audited at least once every two years and upon completion or termination of the project.

b. For projects expected to be completed more than two years from the date of grant offer, an interim audit will be performed upon submission of the Outlay Report and/or Request for Reimbursement for Construction Programs -LPW (page 2 of Form ED-113A) at 40 percent project completion. In those instances where a project originally was expected to be completed in less than 24 months, but for which delays were encountered that extended the completion period beyond 24 months, an interim audit also is to be performed. Such an audit will be based upon the Form ED-113 A, submitted at the 40 percent project completion point.

c. Final audits will be performed on most projects. These audits will be made after the grantee has prepared and has made available to the auditor (i) the final Outlay Report and/or Request for Reimbursement for Construction Programs-LPW (page 2 of Form ED-113A), and (ii) a final project acceptance report.

d. In order for the audit reports to be submitted in a timely manner, the grantee should arrange for the audits well before the 40 percent completion point where interim reports are required and at least thirty (30) days prior to project completion when final audit reports are required. (See Section V A)

e. The Regional Audit Manager serving the State in which the grantee is located is to be notified when the grantee arranges for the audit as provided in Section IV C 1 and 2 of this Guide.

B. Background Information Applicable to the Act of 1977

The foregoing outline for the Act of 1976 also applies to the Act of 1977 except as noted as follows:

1. Authority - No change.

2. Objectives - No change.

3. Availability of Funds - An additional $4.0 billion has been appropriated.

4. Eligible Applicants - No change.

5. Eligible Areas -

a. $100 million set-aside for grants to Indian tribes and Alaskan Native villages.

b. $70 million set-aside for grants rejected under the 1976 Act in error.

c. After the above set-asides, 65 percent of the funds shall be allocated to States on the basis of the ratio of number of unemployed persons in the State to the total number of unemployed in all States, and 35 percent of these funds shall be allocated to States having an unemployment ratio in excess of 6.5 percent on the basis of the relative severity of unemployment in each such State. Except, that no State shall be allocated less than three quarters or more than twelve and one half percent of such funds.

d. The Act of 1977 adds "the Trust Territory of the Pacific Islands" to the definition of "State".

6. Types of Grants - No change.

7. Eligible and Ineligible Projects - No change, except construction activities cannot be performed by force account. (See Section VI, Item B5).

8. Department of Commerce Audit Policies - No change.

9. Additional Provisions of the Act of 1977 of concern to the Auditor

a. Projects for the transportation and provision of water to drought-stricken areas may be included.

b. Only projects accomplished by competitive bid construction contracts will be approved unless the Secretary finds that some other method is in the public interest. Except for a very few instances, this has the effect of eliminating force account projects.

c. Grantees are required to certify that "illegal" aliens will not be employed.

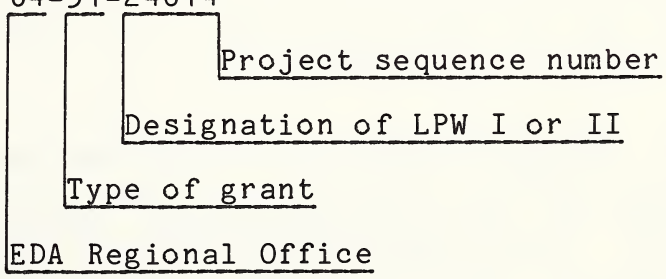
d. Only articles, materials and supplies mined or produced in the United States shall be used in projects except when the Secretary finds that to do so would not be in the public interest.

e. Ten per cent of each grant is to be expended for minority business enterprises, except to the extent that the Secretary determines otherwise.

C. Identification of Projects

Projects can be identified by their project number as shown in the following example:

Project No. 04-51-24614



The EDA Regional Offices are:

a. 01 Atlantic Regional Office
Philadelphia, Pennsylvania
04 Southeastern Regional Office
Atlanta, Georgia
05 Rocky Mountain Regional Office
Denver, Colorado
06 Midwestern Regional Office
Chicago, Illinois
07 Western Regional Office
Seattle, Washington
08 Southwestern Regional Office
Austin, Texas

b. The types of grants are:

51 100 percent direct from EDA to applicant
52 Supplemental to another Federal agency having a Memorandum of Understanding with EDA
71 Supplemental for a State or local share
72 Supplemental to another Federal agency not having a Memorandum of Understanding with EDA

c. Designations of LPW I and II:

0 LPW I (Round One)
2 LPW II (Round Two)

III. FUNDING AND ADMINISTRATION OF GRANTS

A. Funding

EDA grant funds are to be expended only for the purposes and activities covered by a grantee's approved project plans and budget, including project and/or contract changes approved according to EDA instructions. (Records of the project plans and applicable contracts, as revised, are to be retained by the grantee and by the project Architect/Engineer.)

Grant disbursements normally will be by Letter of Credit. The procedures to be followed by the grantee in obtaining funds by drawing on a Letter of Credit are contained in the "Disbursement" sections of the EDA booklets, entitled "Engineering and Construction Guidelines for the Local Public Works Capital Development and Investment Program" and "Engineering and Construction Guidelines for Force Account Projects for the Local Public Works Capital Development and Investment Program." Briefly stated, the initial Letter of Credit will be issued upon acceptance of the grant offer, for 50 percent of the grant amount. When the construction of the total project is at least 40 percent complete and upon submission of a Outlay Report and/or Request for Reimbursement for Construction Programs - LPW (page 2 of Form ED-113A), showing the status of incurred costs, the grantee may apply for an amended Letter of Credit for the remaining 50 percent of the grant. The grantee may draw funds on a Letter of Credit only as needed to pay the costs incurred on behalf of the LPW project(s).

When four or more grants have been made to the same grantee, the funding requirements of such grants will be

consolidated into a single Letter of Credit. Separate Form ED-113A reports and separate audits, however, still will be required for each grant.

Grants of $120,000 or less will be funded by U.S. Treasury checks rather than Letters of Credit. However, those grants of $120,000 or less, which are made to a grantee that qualifies for a consolidated Letter of Credit, will be included in such consolidations. For those grantees to be funded by U.S. Treasury checks, the first check is to be issued for 50 percent of the grant when the grantee has started on-site labor. A second check for the remaining 50 percent of the grant will be issued when EDA receives the Form ED-113A after the construction of the project is at least 40 percent complete.

B. Contracts and Subgrants

The grantee may contract with commercial and professional organizations or subgrant with other governmental organizations a significant portion of the work for which it is responsible. Each contractor or subgrantee should be working under a written agreement which contains complete information on the services to be performed, the price to be paid or budget of the estimated cost to perform the work and the duties of each party (the grantee as well as the contractor or subgrantee).

Where the performance of a part of the basic LPW grant is contracted or delegated to another organization, the grantee is, nevertheless, responsible for performance of all aspects of the project, including proper accounting for the expenditure of funds by the contractor or subgrantee and audit of the contractor or subgrantee. (For requirements for audit of contracts or subgrantees, see Section IV F.)

C. Financial and Performance Reports

The following reports are required at stipulated times for each LPW project.

1. An LPW Project Performance Report (page 1 of Form ED-113A) and the Outlay Report and/or Request for Reimbursement for Construction Programs - LPW (page 2 of Form ED-113A) are to be submitted to EDA on a quarterly basis for performance evaluation purposes and when the construction of the total project is at least 40 percent complete in order for an amended Letter of Credit or a U.S. Treasury check to be issued for the

remaining 50 percent of the grant. Upon completion of the project, the grantee is to prepare a final Outlay Report and /or Request for Reimbursement for Construction Programs-LPW (page 2 of Form ED-113A), which after audit, will serve as the basis for EDA to administratively close out the grant project.

2. A report of Federal Cash Transactions (Form CD-286) will be prepared by the grantee and submitted to EDA within 15 working days after the close of each calendar quarter.

3. A Minority Business Enterprise Utilization Report, Part A (Form ED-530) must be completed for each LPW Round II grant before the issuance of the first Letter of Credit and at 40 percent completion of the project prior to the issuance of the second Letter of Credit unless EDA has specifically excused the grantee from filing this report. If a project involves more than one contract, the grantee must list all the contracts on Form ED-530, Part A. Also, the grantee must secure Form ED-530, Part B, from each minority business enterprise as soon as the firm has executed a binding contract to provide services or supplies for the project. The minority firms identified by the grantee on Part A and for which Parts B of Form ED-530 have been submitted to EDA can be expected to be the minority firms for which "Minority Business Enterprise Project Costs" are shown on the final Outlay Report and/or Request for Reimbursement for Construction Programs - LPW (page 2 of Form ED-113A).

4. A Final Acceptance Report is to be furnished the EDA Regional Office. As a minimum, this report is to consist of a statement by the Architect/Engineer that the project has been accomplished in accordance with the plans and specifications. If work was performed by a contractor, a statement signed by the grantee that it has accepted that work also is to be furnished. Where the work was performed by the grantee, it also is to sign a statement that the project has been accomplished in accordance with the plans and specifications.

D. Financial Responsibilities of the Grantees, Contractors and Subgrantees

1. Responsibilities of the Grantee

The grantee assumes responsibility for financial administration of grant funds as set forth in the EDA

booklet "Guidelines for Accounting and Financial Management Systems for LPW Projects." These responsibilities include:

a. General Requirements

(1) Accounting System and Internal Accounting Controls

The grantee must have established fiscal controls and accounting procedures which assure proper disbursement of, and accounting for, grant funds and matching share requirements (if any) of the grant. This requirement also applies to funds disbursed by the contractors and subgrantees.

(2) Accounting Personnel

The grantees, contractors and subgrantees are to employ adequate personnel to assure that their financial operations and the administration of their accounting system and related internal accounting controls meet the standards outlined in Attachment G of FMC 74-7. (See Appendix F)

b. Special Requirements

(1) Periodic Audit

The grantee is responsible for arranging to have an audit of the grant made with reasonable frequency, but at least once every two years and upon completion or termination of the grant. The only exception to this requirement is where the grantee is notified, in writing, that the Office of Audits will perform the required audit.

For all projects expected to be completed more than 24 months from the date of the grant offer, the audits will be performed in two parts. The first part will be an audit of the grantee's statement of costs incurred (page 2 of Form ED-113A) at the time of 40 percent completion of the project. This will require an interim audit to be performed immediately after the grantee submits Form ED-113A at the 40 percent completion point. The second part of the audit will be performed based upon the Form ED-113A prepared by the grantee after completion of the project.

(Details concerning the schedule for issuance of audit reports is provided in Section V. A.)

(2) Use of Department of Commerce Audit Instructions

For audits of LPW grants which are conducted by State or local government audit organizations or independent public accountants, the grantee is encouraged to select an auditor and to assure that the audit is performed in accordance with the requirements of this Guide. (See Sections IV A, B, and C of this Guide for auditor selection criteria.)

2. Responsibilities of Contractors and Subgrantees

Since the grantee is responsible for the overall administration of EDA grant funds, a contractor or subgrantee is responsible directly to the grantee and has the same financial responsibilities to it as the grantee has to EDA. The grantee must, therefore, assure itself that its contractors meet all of the requirements enumerated above. If the grantee's internal controls do not provide such assurance, the auditor should accordingly expand audit tests. If it is found that the contractor(s) has, in fact, not complied with contract provisions, appropriate disclosure should be made in the audit report.

IV. GENERAL AUDIT INSTRUCTIONS

A. Selection of Auditor

Inasmuch as LPW grantees are State or local governmental units, it is anticipated that the audits will normally be performed by public audit organizations. If for any reason, public auditors are not available, independent public accountants may be engaged for that purpose.

So that audits performed by public auditors and independent public accountants may satisfy fully the Department of Commerce's needs, it is imperative that the audits be performed in accordance with this Guide and that the auditors who perform this work meet the following criteria.

B. Eligibility of Accountants and Auditors to Perform Audits

The Department of Commerce will recognize the following individuals or organizations as being eligible to conduct audits of LPW grants.

1. Public or Internal Auditors

The term "public auditor" refers to auditors who are employees of governmental organizations such as town auditors, or city, county, or State audit organizations. To be eligible to conduct audits of LPW grants, the public auditor must:

a. Be independent of the grantee organization performing the grant. If the public auditor has any close organizational relationship with the grantee organization, details of the relationship should be reported to the Regional Audit Manager for determination as to whether the relationship impares the independence of the auditor.

b. Not be an audit organization whose prime function is to audit vouchers prior to payment.

In cases where the grantee has entered into contracts or subgrants which require audit, such contractors or subgrantees may be audited by the grantee's staff of internal auditors.

2. Independent Public Accountants

The term "Independent Public Accountant" as used herein means an independent certified public accountant, or an independent public accountant licensed on or before December 31, 1970, who is certified or licensed by a regulatory authority of a State or other political sub-division of the United States. The word "independent" is used in the same sense as prescribed by Rule 101 of the Rules of Conduct, Code of Professional Ethics of the American Institute of Certified Public Accountants, as of March 1, 1973, or thereafter amended.

The Department of Commerce will not recognize any certified or licensed public accountant as independent who is not in fact independent. An accountant will not be considered independent with respect to any grantee with which he has, or has had during the period covered by the audit, any relationship deemed by the Department

as creating a conflict of interest. Relationships such as being director, officer, or employee (voluntary or paid) of the grantee, certain family relationships with grantee officials, or rendering bookkeeping services on the grant to be audited should be reported to the Regional Audit Manager for determination as to whether the relationship constitutes a conflict of interest.

Small organizations have limited staffs and, as a result may have limited capabilities for maintaining good accounting records. In such instances the independent auditor may be called upon to assist in maintaining the accounting records and in preparing the financial statements. The independent auditor is not necessarily lacking independence simply because he has performed these services.

If there appears to be any potential impairment of independence or possibility of conflict of interest, the auditor should report the facts in writing to the Regional Audit Manager serving the State in which the grantee is located (see Section VII) for a determination as to the acceptability of the proposed audit.

C. Approval for Conducting Audits

Unless advised in writing that the Office of Audits, U.S. Department of Commerce will perform the required audit, the grantee is responsible for selecting the audit organization and for approving its proposal to do the required audit(s). Although the grantee is responsible for final approval of the audit proposal, the applicable DoC Regional Audit Manager will be available for advice regarding the cost of the audit. The addresses of the regional audit offices and the geographic areas which they serve are shown in Section VII of this Guide.

If the audit is to be performed by a State or local government audit organization, the grantee must assure that the criteria in Section IV B 1 above, are met and obtain a satisfactory proposal in conformity with established State or local government practice. Note, however, that the State or local government practice for audit must meet the minimum requirements of paragraph 1, below.

If an independent public accountant is to be engaged, the grantee is to select one who meets the criteria set forth in Section IV B 2, above. In obtaining an independent public accountant to perform the required

audit work, the grantee is encouraged to engage the firm by competitive negotiations that take into consideration such factors as experience, plans, qualifications and price. Engagement of minority independent public accountants is encouraged. Contracting for the services of an independent public accountant, in any event, must be predicated upon receipt of a satisfactory proposal and accomplished in accordance with established practices of the State or local government. Note, however, that these contracting practices must meet the minimum standards of Attachment O to FMC 74-7 (Appendix F) and paragraph 2, below.

1. Audits by State or Local Government Audit Organizations

Where the grantee routinely is audited at least once every two years by a State or local government audit organization, the grantee should inform the DoC Regional Audit Manager of the schedule for the next audits, the estimated dates on which the reports will be distributed, and whether these audits will include coverage of the LPW grant. For those situations where the grantee is not audited routinely by public auditors, the grantee may make arrangements with the applicable State or local government audit organization for the required LPW audit and then notify the Regional Audit Manager in order to apprise him/her of the scheduled audit. In either event, the grantee is to obtain and approve a proposal from the State or local government audit organization or is to enter into a written agreement with it in which the audit organization:

a. Indicates that it is independent of the grantee's direction or control.

b. Acknowledges that (i) the examination will be conducted in accordance with generally accepted auditing standards, and (ii) the scope of the LPW audit and the resulting report will meet the minimum requirements of this Guide.

c. Provides an estimate of the charge, if any, for the audit.

d. Provides an estimate of the dates the work will begin and the report delivered.

e. Agrees that the working papers prepared in connection with the audit will be retained for a

period of three (3) years from the date of the final audit report and that these working papers will be made available for examination by representatives of the Office of Audits or its designee, if requested.

A sample proposal is furnished for your guidance as Appendix A, Part I of this Guide. The audit proposal should be approved or audit agreement executed as soon as practicable after construction of the total project is reported to be 40 percent complete. Upon approval of the proposal or execution of the audit agreement, a copy of either is to be furnished to the Regional Audit Manager. (See Section V A concerning the schedule for issuance of audit reports and Section VII for addresses of the regional audit offices and their geographic areas of responsibility.)

2. Audit by Independent Public Accountants

In lieu of an audit performed by a State or local government audit organization, an independent public accountant may be engaged for that purpose.

Before engaging an independent public accountant, the grantee is to select an accountant and obtain a proposal from him in accordance with established State or local government practices. So as to obtain assurances concerning the work to be performed, plus details on the fees to be charged and timing of the work, each proposal should include the following items:

a. A statement that he/she is, in fact, an independent public accountant as described in Section IV B 2.

b. An acknowledgment that (i) the examination will be conducted in accordance with generally accepted auditing standards, and (ii) the scope of the audit and the resulting report will meet the minimum requirements of this Guide.

c. A list setting forth:

(1) the number of hours constituting a work-day and the rates per day charged for each classification of accountant.

(2) the estimated number of man-days required to perform the audit,

(3) the estimated out-of-pocket costs, if any, and

(4) the estimated maximum fee, based on conditions present at the time of the job survey, and out-of-pocket costs to be charged for the audit.

d. An estimate of the dates the work will begin and the report delivered.

e. An acknowledgment that the working papers prepared in connection with the audit will be retained for a period of three (3) years from the date of the final audit report and that these working papers will be made available for examination by representatives of the Office of Audits or its designee, if requested.

f. An acknowledgement that the Regional Audit Manager will be advised promptly of any irregularities of the type described in Section IV.1 of this Guide.

A sample proposal is furnished in Appendix A, Part I. It is the responsibility of the grantee to review and approve the accountant's proposal in writing, as soon as practicable after the project is reported to be 40 percent complete and in any instance at least thirty (30) days prior to the date the project is scheduled to be completed. (See Section V. A concerning the schedule for issuance of audit reports.) A copy of the proposal and approval letter is to be submitted to the Regional Audit Manager serving the State in which the grantee is located (See Section VII) in order to apprise him/her of the forthcoming audit.

D. Responsibility of Public Auditors and Independent Public Accountants

In accordance with the generally accepted auditing standards in auditing governmental programs, public auditors and independent public accountants who perform audits of LPW grantees will be responsible for observing the U.S. General Accounting Office's "Standards for Audit of Governmental Organizations, Programs, Activities &

Functions"1/ (Hereafter referred to as the GAO Standards.) The scope of LPW project audits will cover the financial and compliance elements of the GAO Standards which will include examinations of the grantee's financial representations (Page 2 of Form ED-113A) and an evaluation of the grantee's compliance with applicable grant provisions and LPW project instructions.

Therefore, it is essential that public auditors and independent accountants be familiar with the LPW grant conditions, and the contents of this Guide. In particular, it is necessary to recognize the extraordinary provisions of the LPW grant's Standard Terms and Conditions since these contain numerous restrictions on the grantee's operation. Instances of grantee non-compliance with such governing criteria are to be disclosed in the audit report.

E. Background Information to be Provided by the Grantee

Before commencing an audit of the LPW project grant, the public auditor or independent public accountant should request the grantee to make all of the following reference materials available at the grantee's office:

1. A copy of the grantee's application (Form ED-101 LPW plus Form ED-101 LPW-S for Round II grants) to EDA for the LPW project grant, together with all amendments.

2. The signed LPW Offer of Grant and attached Standard Terms and Conditions, and approved Form ED-508 LPW, "Local Public Works Project Line Item Estimated Costs."

3. A precise description of the LPW grant project, as approved by EDA. This is to include the description included in the grant applications plus the plot plan, basic drawings and specifications that describe the parameters and details of the project.

4. A list of all contracts and/or subgrants issued by the grantee for work required under the LPW grant. A copy of each such agreement also should be furnished together with a copy of each change order issued thereunder and a copy of whatever approvals were provided by the architect/engineer and by EDA.

1/For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, stock number 2000-00110. Also see "Auditing Standards Established by the GAO - Their Meaning and Significance for CPAs," Journal of Accountancy, January 1974, pp. 33-39.

5. The following applicable EDA booklets:

   a. "Engineering and Construction Guidelines for the Local Public Works, Capital Development and Investment Program" issued September 1976 (for LPW I) and June 1977 (for LPW II).

   b. "Engineering and Construction Guidelines for Force Account Projects for the Local Public Works, Capital Development and Investment Program" issued September 1976.

   c. "Accounting and Financial Management System Guidelines for the Local Public Works, Capital Development and Investment Program" issued October 1976 (for LPW I) and May 1977 (for LPW II).

6. Any additional EDA policy letters or instructions sent to the grantee for observance in the performance or administration of the LPW grant project.

7. All correspondence concerning this LPW grant including the EDA letter acknowledging the date of receipt of the grant application. (This notification by EDA was sent to grantees on Standard Form ED-1024 or other equivalent Form).

8. All reports submitted to EDA concerning this LPW grant.

9. The applicable Davis-Bacon Department of Labor area wage decision.

10. A copy of any State or local government legislative, executive or judicial orders or directives which have a direct bearing on the administration of this LPW grant.

11. All public auditor and independent public accountant examinations or audits of the grantee within the previous 18 months.

12. A list of all non-expendable items (tangible personal property having a useful life of more than one year and acquisition cost of $300 or more per unit) purchased with grant funds.

13. A title opinion from the grantees legal advisor that the grantee has obtained rights to the project site.

14. The final acceptance report.

F. Audits of Contractors and Subgrantees

In cases where the grantee enters into agreements with other organizations to perform all or part of its work under the LPW grant, the grantee is nevertheless responsible for the performance of the overall program, including proper accounting for the expenditure of funds. In view of this, audits of grantees are to include coverage of each contractor or subgrantee under cost-reimbursable agreements only, for whom it is estimated that the Federal share of costs incurred will exceed $25,000. (This does not apply to fixed price contracts.)

Contractors and subgrantees may have separate audits performed by independent auditors (or government auditors, if a public agency). In some instances the grantee may use its internal audit staff to conduct surveys and audits of contractors. In any case, it is the grantee's responsibility to assure that an audit proposal is obtained from the independent public accountant or public audit organization and is properly approved by the grantee prior to commencing the audit. (See Sections IV A, B and C of this Guide)

To conserve EDA funds and to preclude duplication of audit effort, the grantee's auditors should make maximum utilization of other auditors' coverage of contractors or subgrantees. However, the grantee's auditor, on the basis of his professional judgment in a particular situation, must decide whether to rely upon the other auditors' work entirely, or if necessary, perform test checks of their work, or perform his own audit.

Where audits of contractors or subgrantees are performed by other auditors, the grantee's auditor is not expected to assume responsibility for their work. He may express an opinion regarding the contractors' or subgrantees' activities on the basis of the other auditors' reports and state the extent of his reliance in the scope paragraph.

G. "Exit" Conference

Upon completion of the field work, the auditor should hold a closing or "exit" conference with senior officials of the grantee in order to discuss the results of the audit. The officials in attendance should include at least the official designated to receive the audit results, the official directing the work and a senior financial officer such as the comptroller.

The exit conference serves to provide grantee officials with advance information as a basis for initiating action without waiting for the final report. It also gives the auditor an opportunity to obtain additional information, explanations, or comments on audit results which may have a bearing on his conclusions. Whenever possible, the concurrence of grantee officials or their reasons for nonconcurrence should be obtained and incorporated in the report.

H. Distribution of Audit Reports

Reports on audit of LPW grants are to be forwarded to the addressee designated in Section V H of this Guide along with the invoice for audit services. Four copies of the audit report, one copy of the audit invoice, and two copies of any communication of material weaknesses in internal accounting control as defined in the AICPA's Statement on Auditing Standards Number 20 are to be forwarded to the Regional Audit Manager serving the State in which the grantee is located. The Regional Audit Manager will distribute the audit report to EDA. The addresses of the regional audit offices and the geographic areas which they serve are shown in Section VII of this Guide.

I. Matters Requiring Immediate Action

During the course of the audit, if there is strong indication that an irregularity involving LPW grant funds as defined in the AICPA's Statement on Auditing Standard Number 16 may exist, the auditor is to promptly notify the Regional Audit Manager. In situations of this type involving contractors, the Director of the grantee organization also is to be advised. The matter involved should subsequently be included in the audit report with the status of action taken.

The auditor also is to notify the grantee and the Regional Audit Manager of any significant delays which are expected or have been encountered in meeting the report delivery date shown in the approved audit proposal or contract.

In either of these situations, the required notification may be written or by telephone, but the Regional Audit Manager and Director of the grantee organization should be provided a full explanation of the situation including the apparent cause.

J. Retention of Audit Working Papers

Audit working papers should be retained by the auditor for a period of three (3) years from the date of the final audit report with the understanding that they are subject to review by the Office of Audit at any reasonable time.

K. Inquiries Relating to Audits

Any inquiries or comments relating to this Guide or to the audits of LPW grantees should be directed to the Regional Audit Manager serving the State in which the grantee is located.

L. Program for Quality Control Review of Public Accountants' Reports

The Office of Audits, U.S. Department of Commerce will participate with the audit organizations of several Federal agencies in a program developed with the AICPA to review and take action on members' alleged substandard reports received by the cooperating Federal agencies.

This program covers reports issued on financial representations, compliance with statutes, rules, regulations, and contractual agreements; and includes alleged deficiencies in the adequacy of working papers which support audit conclusions. The program for quality control review of reports submitted by public accountants under this Guide will be operated as follows:

1. Regional Audit Managers are required to review all reports submitted by public accountants and are required to examine the accountants' working papers on a selective but regular basis.

2. Where the Regional Audit Manager finds that the report may be substandard, the Manager is to prepare a memorandum of deficiencies and conclusions and, together with supporting working papers, submit them to the Director, Office of Audits, U.S. Department of Commerce.

3. If the Director, Office of Audits, U.S. Department of Commerce concurs that the public accountant's report may be substandard, he will submit the documentation to the AICPA's Professional Ethics and State Legislation Division for review. At the same time, the public accountant will be advised that his report has been submitted to the Professional Ethics and State Legislation Division.

4. The Professional Ethics and State Legislation Division will assign the case to the appropriate ethics committee and will promptly acknowledge all correspondence and material received. Reports received will be processed as soon as possible.

5. A report deemed adequate by the AICPA's ethics committee(s) will be returned to the Department of Commerce. The AICPA will advise the accountant that his report was deemed adequate and was returned to the Department of Commerce.

6. A report which an AICPA ethics committee believes to require further investigation is to be processed in accordance with the Division's established procedures. These procedures provide for direct communication with the accountant to obtain his answers to questions raised by the report. After full consideration of the case, an AICPA ethics committee would decide whether to:

a. Dismiss the case without action.

b. Urge the accountant to undertake an educational program.

c. Recommend admonishment of the accountant by the Ethics Executive Committee.

d. Find a prima facie case which, with the approval of the Ethics Executive Committee, would be referred to the Trial Board.

7. As applicable, the Trial Board will hear the case and when appropriate, invite Federal agency representatives to appear as witnesses. In accordance with the AICPA's by-laws, the decisions of the Trial Board will be published in the AICPA's membership periodical with or without the names of the individuals concerned, at the option of the Trial Board.

V. SPECIAL AUDIT INSTRUCTIONS

A. Periodic and Final Audits

1. The Standard Terms and Conditions of the grant agreement and EDA instructions provide that unless otherwise advised in writing by the U.S. Department of Commerce, Office of Audits, each LPW grantee shall arrange to have an audit made of the LPW project. In

accordance with Attachment G to FMC 74-7, (Appendix F) such audits shall be made not less frequently than once every two years and upon termination or completion of the project.

2. To accomplish the audits on a timely basis, the grantee is responsible for promptly engaging the auditor and such other advance planning and pre-audit actions as may be required.

a. For projects expected to be completed more than two years from the date of grant offer, an interim audit report will be prepared upon submission of the Outlay Report and/or Request for Reimbursement for Construction Programs-LPW (page 2 of Form ED 113A), at 40 percent project completion. An interim audit report will also be prepared for any projects for which unexpected delays will extend the completion period beyond 24 months. For these, the Form ED-113A prepared at 40 percent completion will also be used as the cut-off point for the interim audit. After an interim report has been prepared, the auditor will be responsible to perform whatever additional field work is necessary in order to issue the final report not later than 90 days after completion of the final Form ED-113A.

b. For LPW projects which require only a final audit report, the grantee must arrange for the audit well before completion of the project in order for the auditor to review the accounting system and compliance matters in time to resolve any questions which might otherwise delay the final acceptance of the project. The final audit report should be issued not later than 90 days after completion of the final Form ED-113A.

B. Audit Objectives

The audit objectives are to report on whether:

1. The costs claimed to have been incurred under the grant are fairly stated in all material respects in conformity with the financial terms of the grant, and

2. The grantee complied with the significant requirements of the grant terms and EDA instructions.

C. Scope of Audit

The auditor should perform sufficient examination of financial transactions, accounts, reports, supporting documentation in accordance with generally accepted auditing standards, and evidence of compliance with applicable grant provisions and EDA instructions to determine whether:

1. The final financial report (page 2 Form ED-113 A) submitted by the grantee presents fairly the Minority Business Enterprise project costs as well as the total costs incurred on behalf of the grant in accordance with EDA requirements.

2. The audited entity has complied with the requirements of the grant provisions and EDA instructions as decribed in Parts II A and B of the Audit Program (Appendix B of this Guide).

D. Determining Allowability of Costs

One of the objectives of the audit is to determine whether the funds were expended in accordance with the requirements of the terms and conditions of the grant and EDA instructions. Therefore, the auditor must identify and question the allowability of any costs incurred for goods or services which are contrary to such requirements.

1. The criteria for questioning costs normally fall under one or more of the following categories:

a. Costs which are specifically designated as unallowable by the Act.

(1) Costs related to watercourse, canal, etc. - see Section 106(a).

(2) Acquisition of any interests in real property.

(3) Maintenance costs. (See Section VI, Item B4)

b. Costs which are specifically unallowable under the terms of the grant. See Sections D 3, 4, 5, and 16, of the Standard Terms and Conditions.

c. Costs which are specifically unallowable according to FMC 74-4. (See Section B 1 of the Standard Terms and Conditions and Appendix E.)

d. Costs which are unreasonable. This may include costs which are not specifically unallowable or unsupportable but which are not considered to reflect an action that a prudent person would have taken under the circumstances and conditions which existed at the time the decision to incur the cost was made. For example, unreasonable costs could be reflected in the purchase of a supply of materials that greatly exceeded grant requirements just before project completion or the purchase of deluxe models of equipment when less expensive models that would accomplish project requirements also were available.

In those instances wherein the auditor is uncertain as to the reasonableness of any cost claimed by the grantee, the auditor should include in the report sufficient details of the transactions as will enable DoC to reach a conclusion on it.

e. Indirect costs which have not been allocated in accordance with a required cost allocation plan. See Part I A 3 of the Audit Program.

f. Costs which are not supported by adequate documentation. This may include lack of time and attendance records, labor distribution records, invoices, receiving reports, payment records, etc., which prevent the auditor from determining whether the costs were proper charges to the grant.

g. Costs which require approval of EDA, according to Section C of Attachment B of FMC 74-4, and for which approval was not obtained.

h. Costs which were not included in the approved budget and result in changes in the scope or the objective of the project.

The designation of a cost as questionable by the auditor does not necessarily mean that the cost will be disallowed. The final determination as to the allowability of costs will be made by EDA.

2. The costs questioned by the auditor should be summarized and presented in the exhibit(s) that accompany the "Financial Activities" section, Attachment 1, of the audit report. This section is to include an opinion concerning the costs claimed. This report also should contain such exhibit(s), with supporting schedules, as required for a clear and

complete presentation of the audit findings and should include appropriate comments as to the auditor's views on all "costs questioned". (See Appendix A, Part II of this Guide.)

3. To aid in identifying ineligible or unallowable costs, a summary of those types of costs peculiar to the LPW Program is provided in Section VI of this Guide.

E. Special Areas of Consideration

The auditor must recognize that both the LPW I and II grants have several unique requirements as to eligibility of costs. Those ineligible costs that require special attention are summarized in Section VI of this Guide. The LPW II grants also contain several unique compliance requirements, the audit procedures for which are detailed in the Audit Program. Thus, Section VI and the Audit Program contained in this Guide must be used together to assure necessary coverage of these special areas. Four matters of particular importance to the audit are described below.

1. Section C.6. of Attachment B. to FMC 74-4 (See Appendix E) states that costs incurred prior to the effective date of the grant are allowable only when specifically provided for in the grant agreement. This effective date of an LPW grant is either the date the grantee accepts the "Offer of Grant" or the date of the "Approval and Award of Grant," depending on which procedure was used in issuing the grant. It was EDA's intention, however, that the starting date for the acceptance of costs incurred by LPW grantees be the date that EDA received the application, and not the later effective date of the grant. LPW regulations provide implicit authorization for the acceptance of such costs. (See Section VI, Note B).

2. Ten percent of an LPW II Grant amount (not incurred costs) must be expended for goods and services furnished by Minority Business Enterprises.

3. Where the same grantee has more than one LPW II grant and where both overruns and underruns have been incurred on the LPW II grant; underruns can be used to offset overruns only when EDA approves a modification to the underrun grant to authorize an additional scope of work. In this manner, the underrun grant will either be amended by EDA to authorize a specified

dollar amount to be used as a supplement to the overrun grant or will transfer a specified part of the scope of work from the overrun to the underrun grant. The example contained in Note (B) to Part II of Appendix A shows the form of presentation where the former method is authorized. If the auditor finds, however, that a part of the scope of work for one or more LPW grants is transferred to another LPW grant, he/she should contact the applicable Regional Audit Manager for additional audit and reporting instructions. The auditor should find this authorization documented on an Offer to Amend Grant Agreement approved by EDA.

4. The LPW Act of 1977 contains a prohibition against any part of the construction activities of an LPW II grant project being performed directly by any department, agency, or instrumentality of an State or local government. This has been interpreted to mean that the grantee cannot use force account labor (grantee's own employees) to accomplish the construction work (including demolition and other site preparation activities). Costs incurred by the grantee are acceptable, however, for functions performed by State and local government employees such as: accounting, legal services, procurement and contracting, and auditing.

F. Compliance

1. The Standard Terms and Conditions of the EDA LPW grant agreement require the grantee and each of its contractors and subcontractors, to comply with the requirements of various statutes and Executive Orders and the respective regulations issued thereunder. Further, the grantee, in Part VI of the application for the project (Form ED-101 LPW or Form ED-101 LPW-S), has assured compliance with various regulations, policies, guidelines and requirements.

The Audit Program (Appendix B) identifies the compliance matters that must be considered by the auditor. Compliance matters which relate to the eligibility of costs to be reimbursed from LPW grant funds are included in Part I C and Part II A of the Audit Program. These must be considered by the auditor in order to determine whether the costs claimed and status of grant funds have been fairly stated on the Form ED-113A. Additionally, an opinion is to be furnished concerning the grantee's compliance with the items listed in Part II A of the Audit Program.

Other compliance matters of a more general nature which should be covered by the auditor on an exception basis are identified in Part II B of the Audit Program.

G. Audit Program

An audit program that fulfills the audit requirements of the LPW Program is outlined in Appendix B of this Guide. It is designed to be used as part of the working papers if the auditor finds it advantageous to do so. (Extra copies may be obtained from DoC Regional Audit Offices.)

The extent to which the tests and examinations of transactions will be carried out under any audit program will be determined by the results of the auditor's evaluation of the grantee's accounting system and internal controls. Where the auditor has prepared an interim audit report, the results of the audit steps carried out in preparing that report may assist the auditor in making judgments on the extent of the audit work required for the final audit report.

The program is designed in such a way that by completing the basic Appendix B, the audit steps common to all LPW grants will be performed. Addendums 1, 2 and 3 to Appendix B then provide the additional steps to be performed when an unusual variety of LPW projects is encountered, i.e., force account or fast-track and those required for the examination of major procurement actions. Addendum 4 to Appendix B provides a short synopsis of selected statutory requirements included in the LPW grants.

H. Reporting Requirements

The audit report on an LPW grant is to be in the form of a letter, addressed to the Director of the public agency grantee having jurisdiction over and responsibility for operation of the entity that was audited. Where audits were performed of individual contractors or subgrantees, the results of such audits are to be included as enclosures to the basic report. The suggested format for this report is shown in Appendix A, Part II of this Guide.

The report must indicate that the audit was performed in accordance with the Department of Commerce "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977". The report must express an opinion on the fairness of the

statement of project costs budgeted, claimed, and questioned and of the statement on the status of grant funds at the project completion date. Also, the report must provide an opinion on the grantee's compliance with the items in Part II A of the Audit Program and identify any matters of grantee non-compliance with the terms and conditions of the grant which are listed in Part II B of the Audit Program.

The report should indicate the concurrence or non-concurrence of grantee officials with the audit findings and should explain in detail any unusual items or circumstances under which the auditor was unable to reach a conclusion.

I. Representation Letter

The AICPA's Statement on Auditing Standards Number 19, establishes the requirement that independent auditors obtain certain written representations from management as part of an examination made in accordance with generally accepted auditing standards. Part III of Appendix A of this Guide provides a suggested representation letter for use in fulfilling this requirement.

VI. SUMMARY OF INELIGIBLE COSTS FOR LPW ROUND I AND ROUND II PROJECTS

The following pages of this Section summarize the types of ineligible costs peculiar to the LPW Program and cites the basis for their ineligibility.

SUMMARY OF INELIGIBLE COSTS FOR LPW ROUND I & ROUND II PROJECTS

Ineligible Costs (A)	LPW I Grant	LPW II Grant			Basis
	LPW I Application	Based on LPW I Application	Original LPW II Application	R-I Error Project	
A. Applicable to All Federally Assisted Programs					
Costs prohibited by FMC 74-4 and FMC 74-7, as amended.	X	X	X	X	Standard Terms and Conditions-Round I & II - Sec. B.1. For Round II Grants-13 CFR 317.17 (a) (7).
B. Items Peculiar to the LPW Program					
1. All costs incurred before the original application submission (EDA receipt) date (B) except for those expenses incurred under the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" as amended (P.L. 91-646).	X	X	X	X	Standard Terms and Conditions-Round I & II - Sec. D.3. For Round II Grants-13 CFR 317.17 (a) (7).
2. All costs associated with a project having as its principal purpose and/or permanent effect the channelization, damming, diversion, or dredging of any natural watercourse, or the construction of any canal, except for a canal or raceway designated for maintenance as an historic site.	X	X	X	X	P.L. 94-369 and P.L. 94-369 as amended by P.L. 95-28, Sec. 106(a). Standard Terms and Conditions-Round I & II Sec. D.4. For Round I Grants-13 CFR 316.6(a). For Round II Grants-13 CFR 317.15(a).
3. Costs for the acquisition of any interest in real property.	X	X	X	X	P.L. 94-369 and P.L. 94-369 as amended by P.L. 95-28, Sec. 106 (b). Standard Terms and Conditions-Round I & II-Sec. D.5. For Round I Grants-13 CFR 316.6(b). For Round II Grants-13 317.18(a).

Ineligible Costs (A)	LPW I Grant: LPW I Application	LPW II Grant: Based on LPW I Application	LPW II Grant: Original LPW II Application	LPW II Grant: R-I Error Project	Basis
4. Maintenance costs. (C)	X	X	X	X	P.L. 94-369 and P.L. 94-369 as amended by 95-28, Sec. 106(c). For Round I Grants-13 CFR 316.6(c). For Round II Grants-13 CFR 317.18(b).
5. All costs of construction (including demolition and other site preparation activities) renovation, repair or other improvements (D) for work performed directly by any department, agency or instrumentality of any State or local government including Indian Tribes except for architectural-engineering (A&E) services required for the completion of plans, specifications, and estimates where either architectural design or preliminary engineering or related planning has already been undertaken and where additional architectural and engineering work or related planning is required to permit construction. (The A&E work included within the exception noted above are eligible.)		X	X		P.L. 94-369 as amended by P.L. 95-28, Sec. 106 (e)(1) and 103(a). Standard Terms and Conditions, Assurance No. 22. For Round II Grants-13 CFR 317.18(e).
6a. All costs associated with any contract under the grant for which the grantee fails to obtain a certification that the contractor will not award a contract to any bidder who will employ any alien		X	X		P.L. 94-369 as amended by P.L. 95-28, Sec. 106 (e)(2). Standard Terms and Condition, Assurance No. 17. For Round II Grants-13 CFR 317.35(h).

Ineligible Costs (A)	LPW I Grant: LPW I Application	LPW II Grant: Based on LPW I Application	LPW II Grant: Original LPW II Application	LPW II Grant: R-I Error Project	Basis
in the U.S. in violation of any U.S. law, convention or treaty.					
b. All costs associated with any contract on which the contractor employed any alien in the U.S. in violation of any U.S. law, convention or treaty.		X	X		Same as 6a. above.
7a. All costs incurred for the purchase of raw materials and manufactured goods used in LPW projects, which items were not substantially produced or mined in the U.S. unless determined by the Assistant Secretary for Economic Development that this requirement is not applicable to the instant project.		X	X		P.L. 94-369 as amended by P.L. 95-28, Sec. 106 (f)(1)(A). Standard Terms and Conditions, Assurance No. 18. For Round II Grants-13 CFR 317.35(i) & 13 CFR 317.16(c).
b. All of the otherwise eligible costs of an LPW project, in such instance where a significant portion of the project was not constructed from raw materials mined or produced in the United States, unless determined by the Assistant Secretary for Economic Development that this requirement is not applicable to the instant project. This restriction applies both to EDA funds and State and local funds on the same project. It does not		X	X		Same as 7a. above.

Ineligible Costs (A)	LPW I Grant: LPW I Application	LPW II Grant: Based on LPW I Application	LPW II Grant: Original LPW II Application	LPW II Grant: R-I Error Project	Basis
however apply to funds provided by other Federal agencies.					
8. All costs when the grantee fails to provide adequate assurances that the labor standards of the Davis-Bacon Act, as amended (40 USC 276a - 276a-5) will be maintained on the construction work. Such standards include the payment of prevailing wage rates of the area as determined by the Secretary of Labor, to laborers and mechanics employed for all construction undertaken in connection with this project.	X	X	X	X	P.L. 94-369 and P.L. 94-369 as amended by P.L. 95-28, Sec. 109. Standard Terms and Conditions - Round I & II - Assurance No. 16. For Round I Grants-13 CFR 316.10(b)(7). For Round II Grants-13 CFR 317.35(g).
9. All costs incurred for construction(D) work performed prior to the date EDA received the grantees resubmission(E) of a Round I applications resubmitted under LPW II.		X			LPW Program Application Supplement ED-101 LPW-S, Part VI: Assurance 8.
10. Construction costs(D) incurred prior to the projected denial date(F) for Round I error projects awarded under LPW II. Costs that are eligible prior to the resubmission date are outlined in Reference Note B.				X	
11. The costs associated with any major	X	X	X	X	FMC 74-7, Attachment K - Item 5.

Ineligible Costs (A)	LPW I Grant: LPW I Application	LPW II Grant: Based on LPW I Application	LPW II Grant: Original LPW II Application	LPW II Grant: R-I Error Project	Basis
changes in the scope of the grant project, which were not approved by EDA.					For Round I Grants-13 CFR 316.11(i). For Round II Grant-13 CFR 317.71(h).
12. Interest costs, except where EDA is supplementing another program in which interest costs are legislatively authorized.	X	X	X	X	Standard Terms and Conditions-Round I & II - Sec. D.16. For Round II Grants-13 CFR 317.18(f).
13. Costs incurred under construction contracts not awarded by competitive bidding (unless specifically waived by EDA).		X	X		13 CFR 317.19(a).
14. Costs incurred in violation of the 10% minority business enterprise utilization clause. (See Note 6 to illustrative financial statements presented in Exhibit A to Attachment 1 of the sample audit report which is presented in Part II of Appendix A.)		X	X		13 CFR 317.19(b) and 13 CFR 317.35(j).
15. Costs overruns. (However, see Special Areas of Consideration - Section V E 3 for LPW II grants.)	X	X	X	X	For Round I Grants - 13 CFR 316.10(d). For Round II Grants - 13 CFR 317.18(c).

Reference Notes and Definitions

A. Ineligible Costs - Those costs incurred by the grantee which DO NOT meet the Basic Guidelines for determination of costs as contained in Paragraph C of Attachment A to FMC 74-4.

B. Application Submission (Receipt) Date - Although Section D.3. of the LPW Standard Terms and Conditions for Round I and Round II provides that the cut-off for determining eligibility of costs is "...the date of submission of the application to EDA," EDA considers the submission date to be synonymous with the date the prospective grantee's application was received. The EDA application receipt date is recorded in Block 25 of the original application (EDA-101-LPW) which is located in the EDA official project file and also is shown on the EDA Regional Office letter which notified the prospective grantee that its application has been received. This notification was sent on Standard Form ED-1024 or other equivalent form.

Therefore, the auditor should question all costs incurred prior to EDA's application receipt date, except those expenses incurred under the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" as amended.

In some instances where EDA determined that the application was incomplete or inadequately prepared a Standard Form ED-1025 or equivalent form was sent to the grantee informing it of the deficiencies, and requesting that corrected material be sent to EDA. EDA regards the date this corrected material was received as being the application receipt date and has revised Block 25 of the original application (EDA-101-LPW) to show this date. EDA informed the grantee of the revised application receipt date by means of Standard Form ED-1024 or equivalent form.

Therefore, in these instances the auditor should question all costs incurred prior to the date EDA received the revised application, except for those expenses incurred under the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" as amended.

Furthermore, for LPW II projects originally submitted but denied under Round I, all costs incurred prior to the project resubmission date (Note E) are ineligible except for administration and the expenses for other non-construction activities. All construction related activities including renovation, repair, and other improvements are ineligible (See Note D).

C. Maintenance Costs - Costs that are incurred for any necessary repairs or upkeep of property which neither adds to the permanent value of the property or appreciately prolongs its intended life, but rather keeps it in an efficient operating condition.

D. Construction (including demolition and other site preparation activities) renovation, repair, or other improvement costs - Includes all project costs except the costs of auditing, legal services, accounting, procurement and contracting, and other financial management activities allowable under FMC 74-4, and the costs of architectural and engineering services required to complete and update plans, specifications and estimates where either architectural design or preliminary engineering or related planning has already been undertaken, and where additional architectural and engineering work or related planning is required to permit construction of the project. All other architectural-engineering services are considered to be construction activities and except as permitted above the associated costs are ineligible when performed by public employees for LPW II projects.

The LPW II restriction concering use of public employees does not apply to Round I (R-1) error projects.

E. Project Resubmission Date - The EDA LPW Round II supplemental application receipt date recorded in Block 25 of the supplemental application (Form ED-101LPW-S). The grantee was notified of this date by means of Standard Form ED-1024 or other equivalent form.

F. Project Denial Date - The date the grantee was notified on Standard Form ED-1026 or equivalent form that its project was denied, or December 23, 1976, whichever date is earlier.

VII. DIRECTORY OF REGIONAL AUDIT OFFICES AND GEOGRAPHIC AREAS OF RESPONSIBILITY

REGIONAL OFFICES	AREA OF RESPONSIBILITY
Central Regional Office Office of Audits U.S. Department of Commerce Mid-Continental Plaza Bldg. 55 East Monroe Street, Room 1411 Chicago, Illinois 60603 Telephone: (312) 353-2382	Illinois, Indiana, Iowa Kansas, Michigan, Minnesota Missouri, Nebraska, Ohio Wisconsin
Mid-Atlantic Regional Office Office of Audits U.S. Department of Commerce 1730 K Street, NW, Room 410 Washington, D.C. 20006 Telephone: (202) 634-7888	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
Northeastern Regional Office Office of Audits U.S. Department of Commerce 26 Federal Plaza New York, N.Y. 10007 Telephone: (212) 264-4152 or (212) 264-4153	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Puerto Rico, Virgin Islands
Southeastern Regional Office Office of Audits U.S. Department of Commerce 1365 Peachtree St., NE, Room 340 Atlanta, GA 30309 Telephone: (404) 881-7494	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Southwestern Regional Office Office of Audits U.S. Department of Commerce 1100 Commerce Street Dallas, Texas 75242 Telephone: (214) 749-2774	Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming
Western Regional Office Office of Audits U.S. Department of Commerce Federal Bldg., Box 36134 450 Golden Gate Ave. San Francisco, CA 94102 Telephone: (415) 556-0149 or (415) 556-7226	Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territory of the Pacific Islands

VIII. DIRECTORY OF EDA REGIONAL OFFICES AND GEOGRAPHIC AREAS OF RESPONSIBILITY

Inquiries should be directed to the Chief, Public Works Division, in the EDA Regional Office.

Regional Offices	Area of Responsibility
Atlantic Region Economic Development Administration 10424 Federal Building 600 Arch Street Philadelphia, PA 19106 Telephone: (215) 597-7600	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, West Virginia
Southeastern Region Economic Development Administration 1365-Peachtree St., NE 7th Floor Atlanta, GA 30309 Telephone: (404) 881-7906	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Midwestern Region Economic Development Administration 32 West Randolph St. (RO 06) Chicago, IL 60601 Telephone: (312) 353-4570	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Western Region Economic Development Administration 1700 Westlake Ave., North Suite 500 Seattle, WA 98109 Telephone: (206) 442-5476	Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, Trust Territory of the Pacific Islands
Southwestern Region Economic Development Administration American Bank Tower, Suite 600 221 West Sixth Street Austin, TX 78701 Telephone: (512) 397-5484	Arkansas, Louisiana, New Mexico, Oklahoma, Texas
Rocky Mountain Region Economic Development Administration 909 17th Street Suite 505, Title Building Denver, CO 80202 Telephone: (303) 837-4583	Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming

APPENDIX A
Part I

SUGGESTED FORMAT FOR AUDITOR'S PROPOSAL

(Auditor's Letterhead)
Date: _____

In reply refer to:
Audit Proposal
Location: _____

Grantee
Name and Address

Dear _____:

In accordance with your request for a proposal to perform a final (an interim) audit of LPW Grant No. _____, we submit the following information:

1. The (name or State or local government audit organization) qualifies under the criteria set forth in Section IV, Part B1 of the Department of Commerce "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977", to perform an audit of the grant.

-OR-

We are (I am an) "Independent Public Accountant(s)" as defined in Section IV, Part B2 of the Department of Commerce "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977", and (a) (certified public accountant(s)), or (a) (public accountant(s) licensed on or before December 31, 1970) by a regulatory authority of the State of _____.

2. We (I) will comply with guidelines in the Department of Commerce "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977". The scope of the audit and the resulting report will be sufficient to meet the requirements of these instructions.

3. Classification of accountants:

a. (Senior); $($20.00) per hour or $(160) per (8) hour day.

b. _____; $_____ per hour or _____ per _____ hour day.

c. _____; $_____ per hour or _____ per _____ hour day.

4. We (I) estimate that _____ man-days will be required to perform the audit.

5. We (I) estimate the out-of-pocket costs to be $_____.

6. The estimated maximum fee based on conditions present at the time of the job survey, and out-of-pocket costs to be charged for the audit, will not exceed $_____.

7. We (I) estimate that the audit will begin on or about _____ and our (my) report will be delivered by _____. If during the course of our (my) examination, it becomes apparent that we (I) will not meet this deadline, you will be promptly notified.

8. We (I) agree that all the working papers prepared in connection with this audit shall be retained for a period of three years and that these working papers will be made available for examination, if requested, by duly authorized representatives of the Department of Commerce, Office of Audits.

9. We (I) will comply with Section IV I of the Department of Commerce's (DoC) "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977", in that we will promptly notify DoC's Regional Audit Manager if irregularities involving LPW grant funds as contemplated by this section of the Guide are encountered.

10. In accordance with the requirements of Section IV H of the Audit Guide any written communications by us to you regarding material weaknesses in internal accounting control would also be furnished to appropriate DoC Regional Audit Managers.

11. By acceptance of this proposal, you are authorizing us (me) to comply with Sections 8, 9, and 10 of this letter.

(Add any other conditions or qualifications concerning the audit engagement, as may be appropriate.)

Respectfully submitted,

If the terms of this engagement, as set forth in this letter are acceptable to you, you may so indicate by signing in the appropriate place designated below.

Accepted:

_____ _____

Name and Title Date

FORMAT FOR THE AUDIT REPORT

The audit report is to consist of a transmittal letter addressed according to Section V, Part H of this Guide and a series of attachments, one for each of the principal areas of audit coverage. These areas include, but are not necessarily limited to (i) reporting on the allowability of costs incurred under the LPW grant, (ii) reporting on the compliance with EDA instructions for LPW grants, and (iii) comments and the results of the discussion of audit findings and conclusions with grantee officials. All of these documents are to be bound together to constitute a single report.

If the overall scope of audit is expanded or if significant findings require lengthy explanation, additional attachments are to be included as needed, to present clearly the results of audit.

The following sections illustrate the form and content, including the minimum information and narrative description of each of the constituent parts of the audit report.

I. TRANSMITTAL LETTER

TO: Grantee, Name and Address

A. First Paragraph

(The introductory paragraph must include, as a minimum (i) the name of the grantee, (ii) the project number, purpose of the grant, and total estimated cost of the LPW grant, and (iii) the purpose of the report. A sample paragraph is as follows:

"This report is to present the results of our final/interim audit of (grantee's name), as required by the U.S. Department of Commerce, Economic Development Administration (EDA), Office of Public Works for LPW (Grant No. _____). This grant requires the grantee to (give the purpose of the grant, i.e., to assist in constructing and equipping an industrial park.) The grant provides for reimbursement of costs incurred in an estimated amount not to exceed $_____.")

B. Second Paragraph

(This paragraph must include, as a minimum, the objective of the audit, a general description of the audit performed, and a reference to the period covered by the audit. Reference to use of the Department of Commerce "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977" must also be included. A sample paragraph is as follows:

"The objectives of our examination were to (i) review, test and report upon the costs incurred under the grant, and (ii) review, test and report on compliance with grant terms, conditions and EDA requirements. Accordingly, we have performed an examination of the costs incurred by the grantee and reviewed its method of complying with the LPW grant requirements for the period from (Date) through (Date). Our work did not constitute an audit of financial statements prepared by the organization, other than the Statement of Project Costs Claimed from (Date) through (Date) (Exhibit A), and the Status of Grant Fund Payments as of (Date), (Exhibit B).")

C. Other Paragraphs

(The other paragraphs must include, as a minimum, a reference to the attachments which follow and identify the subject matter of each. Sample paragraphs are as follows:

"Details concerning the scope of audits, the results of audit and the discussion of audit results with grantee officials for each of the areas described below, are presented in the referenced attachments."

Financial Activities--Attachment 1
Accountant's Report
Exhibit A--"Statement of Project Costs Claimed from (Date) through (Date), and Comparison of Accepted Project Costs with Estimated Project Costs"
Exhibit B--"Statement of Status of Grant Fund Payments as of (Date)"

Compliance with Grant Terms and Conditions and Other EDA LPW Requirements--Attachment 2

Results of Discussion of Audit Findings and Conclusions with Grantee Officials--Attachment 3

"The report is intended for use in connection with the grant to which it refers and should not be used for any other purpose."

In accordance with the "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977", we have sent four (4) copies of this report and attachments to the Department of Commerce,_____ Audit Manager.)

_____ Date

_____ Accountant's Signature

II. FINANCIAL ACTIVITIES

(This attachment entitled "Accountant's Report" must (i) include the objective and scope of work, and (ii) include a summary of audit results, including appropriate explanation of findings and conclusions (if applicable).)

A. Objective and Scope

(This section must include, as a minimum, the objectives of this part of the audit and the scope of work. A sample paragraph is as follows:

"We have examined Doe City's Statements of Project Costs Claimed and Status of Grant Fund Payments as of and for the period ended August 31, 1978, and tested financial transactions, accounts, reports and related supporting documentation. Our examination was made in accordance with generally accepted auditing standards and the standards for audit of financial transactions, accounts, and reports, as set forth in the auditing standards for governmental activities published by the Comptroller General of the United States, and accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances, including those set forth in the Department of Commerce's Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977.")

B. Audit Results

(This section must contain, as a minimum, an opinion on LPW costs incurred and claimed on Form ED-113 A, the costs accepted and costs questioned with complete explanation as to the basis for questioning costs. To the extent it is possible to do so, the explanation of costs questioned should indicate those in which grantee officials have concurred and those in which they have not concurred. A sample of this section is as follows:

"The aforementioned statements of project costs set forth $64,156 of auditor questioned costs. The final determination as to whether such costs are allowable under the terms of the grant agreement will be made by EDA*"

"In our opinion, subject to the ultimate disposition of questioned costs,* the accompanying statements of grant costs presents fairly the budgeted costs, costs claimed, costs questioned* and the status of grant funds for Grant No. 04-51-22347 as of August 31, 1978, in conformity with generally accepted accounting principles, the Department of Commerce's audit instructions referred to above and the specific financial terms of the grant agreement.")

*If there are no costs questioned, delete these references to questioned costs.

DOE CITY GEORGIA
PROJECT NO. 04-51-22347
STATEMENT OF PROJECT COSTS CLAIMED FROM (EFFECTIVE DATE OF GRANT) THROUGH AUGUST 31, 1978, AND COMPARISON OF ACCEPTED PROJECT COSTS WITH ESTIMATED PROJECT COSTS

	Cost Classification	Costs Claimed Per ED-113A (Note A)	Audit Recommendations Questioned Costs	Audit Recommendations Accepted Costs	Cost Estimates Per Grant (Note B)	Overrun (Underrun)	Reference Notes
1.	Administrative Expenses	$ 19,397	$ 5,800	$ 13,597	$ 16,000	($ 2,403)	1
2.	Basic A/E Fees Updating and/or Completion of Plans and Specifications	33,000	30,000	3,000	24,000	(21,000)	2
3.	Other A/E Fees	12,347	8,347	4,000	2,000	2,000	3
4.	Project Inspection Fees Including Audit	2,500		2,500	3,000	(500)	
5.	Relocation Expenses	8,000		8,000	7,000	1,000	
6.	Relocation Payments to Individuals and Business	16,415	2,000	14,415	18,000	(3,585)	4
7.	Demolition and Removal	5,000		5,000	5,000		
8.	Construction & Project Improvements	755,509	5,509	750,000	691,000	59,000	5
9.	Equipment	11,500		11,500	10,000	1,500	
10.	Contingencies	(Note C)			44,000	(44,000)	
	MBE Non-Compliance		12,500	(12,500)		(12,500)	6
	Totals for Project	$863,668	$64,156	$799,512	$820,000	($20,488)	

APPENDIX A
PART II

EXHIBIT B

DOE CITY, GEORGIA
LOCAL PUBLIC WORKS PROJECT NO. 04-51-22347 GRANT
STATEMENT OF STATUS OF GRANT FUND PAYMENTS
AS OF AUGUST 31, 1978

Total authorized costs per grant budget.....		$820,000
Project costs (per ED-113A).....		$863,668
Less: Questioned costs.....		64,156
Total acceptable project costs....		$799,512
Amount of LPW grant payable--100% of above acceptable costs ($799,512) or $820,000 whichever is smaller		$799,512
Less payments made:		
Authorized by Grant No. 04-51-22347	$800,000	
Authorized by Grant No. 04-51-22451	20,000	
Total letter of credit authorized (Note B)	$820,000	
Less: Payment vouchers process by the Doe City National Bank.....	820,000	$820,000
Available balance--Letter of credit.....	$ -0-	
Project balance at August 31, 1978 Due to (Receivable from) EDA (See Note 7).....		$ 20,488

Notes to Financial Statements

A. Financial Statement Presentation and Summary of Significant Accounting Policies:

1. The financial statements presented are prepared from only the accounts and financial transactions of the Local Public Works Project No. 04-51-22347 of Doe City, Georgia. Accordingly, they do not present the financial position or the results of operations of Doe City, Georgia.

2. The financial transactions of the project are recorded in accordance with the terms and conditions of the grant, which are not inconsistent with generally accepted accounting principles.

3. Expenditures are recorded on the accrual basis of accounting. Purchases of equipment are recorded as costs.

4. Pursuant to the terms and conditions of the grant agreement the EDA instructions, certain costs incurred prior to the effective date of the grant are included herein.

B. The total approved budget consists of:

Budget as approved on Form Ed-508LPW for Grant No. 04-51-22347.	$800,000
Underrun on Grant No. 04-51-22451 approved for use on this project.	20,000
Total LPW funds available for Grant Project No. 04-51-22347.	$820,000

Note: If the auditor finds that part of the scope of work for one or more LPW grants is transferred to another LPW grant, contact the applicable Regional Audit Manager for additional audit and reporting instructions.

C. Inasmuch as the purpose of the Contingency item of the approved budget (ED-508LPW) is to cover possible overruns on the other cost classifications, no costs for this item should be claimed on the ED-113A.

Reference Notes

1. Administrative costs questioned consist of:

Indirect expenses	$ 3,900
Grantee organization had not developed a cost allocation plan meeting the requirements of FMC 74-4. Therefore, such costs are questioned.	
City Manager's salary for time spent on the project	1,900
The City Manager's salary is associated with the function of general government and is therefore unallowable under the provisions of FMC 74-4, Attachment B, Part D.	
	$ 5,800

2. A/E fees for updating plans questioned consist of:

The grantee claimed $33,000 for A/E costs for updating plans incurred after the project application was received by EDA. Included in this amount was $3,000 for services provided by the State Engineering Department, and $30,000 for services provided by the Engineering Co. of Doe City.	
The contract with the A/E firm was based on inadequate negotiations that resulted in a percentage-of-construction-cost contract. Negotiations were based solely on the American Society of Civil Engineers' 1975 Manual No. 45, Fee Curve B.	
The grantee provided no evidence that detailed negotiations, based on adequate pricing data, were conducted to establish the reasonableness of the price for these A/E services. Therefore, these costs have been questioned.	$ 30,000

3. Other A/E fees questioned costs of:

The grantee claimed $12,347 for other A/E costs incurred after the project application was received by EDA. Included in this amount was $1,000 for services provided by the State Engineering Department, $7,347 for services provided by the Engineering Co. of Doe City, and $4,000 for services provided on a fixed price basis by the K & K Architects of East Point.

a. The $1,000 for services performed by the public employees of the State Engineering Department have been questioned in accordance with Section 106(e)(1) of the LPW Act, as amended. $ 1,000

b. The $7,347 for services provided by the Engineering Co. of Doe city was based on a contract that provided for reimbursement of the engineer's actual direct salary cost plus a multiplier for indirect costs and profit. This is a form of "cost-plus-a-percentage-of-cost" contracting and as such is specifically prohibited by paragraph 3.C.(4) of Attachment O to FMC 74-7. Therefore, these costs have been questioned. 7,347

$ 8,347

4. Relocation payments to businesses and individuals questioned consist of:

S. Ridgeway-inspection fee
To correct error - this expense is applicaple to another project $ 2,000

5. Construction and Project Improvement costs questioned consist of:

Layne & North - Painting contract $ 1,717

This is for painting of existing fence and is therefore a maintenance cost and unallowable under Sec. 106(c) of the LPW Act of 1976. Note - This contractor was an MBE.

Dixie Asphalt Co. - Paving parking lot	3,475
Contract did not contain requirement to pay wages in accordance with Davis-Bacon Act.	
To correct for various invoices not charged to project net of discounts as required by FMC 74-4.	317
	$ 5,509

6. The $12,500 of costs questioned for MBE non-compliance is the result of grantee falling short by $1,000 in meeting the required amount for MBE. This was determined as follows:

	Costs Claimed Per ED-113A	Audit Recommendations Questioned Costs	Audit Recommendations Accepted Costs
Total project costs applicable to MBE	$70,908		
MBE costs questioned in Note 5		$1,717	
Costs claimed for MBE not supported by ED-530B		6,191	
MBE costs accepted			$63,000
Totals for MBE	$70,908	$7,908	$63,000
Deduct MBE requirement (8% of ($800,000)			64,000
Deficiency in meeting MBE requirement			$ 1,000

Inasmuch as the grantee earns entitlement to grant funds by using 8% of the grant amount for goods and services of MBEs, then $1,000 ÷ .08 = $12,500 is the amount of grant funds to which the grantee loses

entitlement because of the $1,000 deficiency in fulfilling the MBE requirement.

It should be noted, however, that the $6,191 of MBE costs questioned applies to a subcontractor, the XYZ Paving Company, for which no ED-530B was available. In event that this firm supplies an ED-530B, and it is found to be acceptable by EDA, the $12,500 of project cost questioned would no longer apply.

(The auditor should note that the 8% MBE requirement applies only to the $800,000 grant amount for this project. The MBE requirement for the other grant that funded $20,000 of the costs of this project, must be satisfied in accordance with the requirements originally agreed upon and submitted on Form ED-530 for that grant.

7. In accordance with EDA's Engineering and Construction Guidelines, the grantee may, with the prior approval of EDA, use the project balance by adding to the construction portion of the project by change order(s) for such work as will further the purposes of the LPW Act.

III. COMPLIANCE WITH GRANT TERMS AND CONDITIONS AND EDA LPW REQUIREMENTS

(This attachment is to include (i) the scope of examination, and (ii) the audit results.)

A. Scope

(This section must include, as a minimum, the scope of work performed. A sample paragraph is as follows:

"In connection with our examination of the financial statements as reported in Attachment I, we have reviewed the terms and conditions of the grant and EDA/LPW instructions and have performed tests of (Grantee's) operations and records applicable to the compliance requirements set forth in Parts II A and B of the audit program in the Department of Commerce Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977.")

B. Audit Results

(This section must include, as a minimum, an opinion concerning the grantee's compliance with the items listed in Part II A of the audit program, and disclosure of any items listed either in Part II A or II B of the program for which the grantee failed to comply with the grant terms and conditions and EDA instructions. A sample section is as follows:

"In our opinion, for the items tested, the grantee complied in all material respects with the applicable compliance matters contained in Part II A of the audit program referred to above. Further, based upon procedures performed in accordance with Part II B, nothing came to our attention to indicate that the grantee had not complied in all material respects with all applicable items listed in Part II B of the audit program referred to above."

- OR -

"In our opinion, for the items tested, the grantee complied in all material respects with the applicable compliance matters contained in Part II A of the audit program referred to above, except for those related to the questioned costs on Exhibit A. Further, based upon procedures performed in accordance with Part II B, nothing came to our attention to indicate that the grantee had not complied in all material respects with all applicable items listed in Part II B of the audit program referred to above."

- OR -

"In our opinion, for the items tested, conditions were disclosed which we consider to be matters of non-compliance, in addition to those related to the questioned costs on Exhibit A. These matters of non-compliance, along with our recommendations for corrective actions are outlined in the paragraphs below. Except for these matters, the grantee complied in all material respects with the applicable compliance matters contained in Part II A of the audit program. Further, based upon procedures performed in accordance with Part II B and except for those items of non-compliance shown below, nothing came to our attention to indicate that the grantee had not complied in all material respects with all other applicable items listed in Part II B of the audit program referred to above.")

IV. RESULTS OF THE DISCUSSION OF AUDIT FINDINGS AND CONCLUSIONS WITH GRANTEE OFFICIALS

This attachment may be omitted if there were no audit findings of sufficient significance to comment upon or to warrant discussion with grantee officials. Otherwise, this attachment should include the results of such discussions. Also, identify the officials involved in the discussions, and, wherever possible, their concurrence with audit results or their reason(s) for nonconcurrence should be included. If grantee officials make a written response, that response and the auditors comments on it (if applicable) also should be included.

SUGGESTED FORMAT FOR GRANTEE'S REPRESENTATION LETTER

(Date of Auditor's Report)

(To Independent Auditor)

In connection with your examination of the (1) Statements of Project Costs Claimed from _____ through _____ and Status of Grant Fund Payments as of August 31, 1978 for the Doe City, Georgia, Economic Development Administration Local Public Works Project No. 04-51-22347 for the purpose of expressing an opinion as to whether these statements present fairly project costs claimed and status of grant funds in conformity with generally accepted accounting principles, and (2) compliance with the Department of Commerce's "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977", we confirm, to the best of our knowledge and belief, the following representations made to you during your examination on matters pertaining to the project being audited.

1. We are responsible for the fair presentation in the Statements of Project Costs Claimed and Status of Grant Fund Payments in conformity with generally accepted accounting principles. We believe that all costs claimed are eligible for reimbursement under the terms of the grant agreement. In this regard, our response to costs questioned by you are set forth as an appendix to this letter.

2. We have made available to you all

   a. Financial records and related data.

   b. Minutes of the meetings of (insert appropriate bodies) or summaries of actions of recent meetings for which minutes have not yet been prepared.

   c. Background information set forth in Section IV E of the "Audit Instructions for Local Public Works Grants Under Title I of the Public Works Employment Acts of 1976 and 1977" thereafter referred to as the Audit Guide.

3. There have been no:

a. Irregularities involving management or employees who have significant roles in the system of internal accounting control.

b. Irregularities involving other employees that could have a material effect on the Statements of Project Costs Claimed and Status of Grant Fund Payments.

c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the Statements of Project Costs Claimed and Status of Grant Fund Payments.

4. Related party transactions and related amounts receivable or payable, including revenues, expenditures, loans, transfers, leasing arrangements and guarantees have been properly recorded or disclosed in the Statements of Project Costs Claimed and Status of Grant Fund Payments. There have been no bribes or kickbacks.

5. There are no:

a. Matters of noncompliance with grant contract terms or requirements set forth in the Audit Guide whose effects should be considered for disclosure or questioning costs in the Statement of Project Costs Claimed and Status of Grant Fund Payments or as a basis for recording a loss contingency.

b. Other material liabilities or gain or loss contingencies that are required to be accrued or disclosed by Statement of Financial Accounting Standards No. 5.

6. There are no unasserted claims or assessments that our attorney has advised us are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards No. 5.

7. There are no material transactions that have not been properly recorded in the accounting records underlying the Statements of Project Costs Claimed and

Status of Grant Fund Payments. All liabilities with respect to EDA funds have been recorded in the proper records.

8. The city has satisfactory title or a non-cancelable long-term lease to all real property relevant to the project, and there are no liens or encumbrances on such assets nor has any of these assets been pledged.

9. Purchase commitments have not been made for inventory quantities in excess of normal requirements or at prices in excess of the prevailing market prices.

10. We have complied with all aspects of contractual agreements that would have a material effect on the Statements of Project Costs Claimed and Status of Grant Fund Payments in the event of noncompliance.

11. No events have occurred subsequent to date of the financial statements that would require adjustment to, or disclosure in the Statements of Project Costs Claimed and Status of Grant Fund Payments.

_____

(Name of Chief Executive Officer
Associated With The Grant and Title)

_____

(Name of Chief Financial
Officer and Title)

AUDIT PROGRAM

Identification Data

Grantee:

Name_____

Address_____

LPW Grant No._____Date of award:_____

Amount of Grant $_____

Period of Performance_____

State or Local Government Audit Organization or Public Accountant:

Name_____

Address_____

Period Covered by Audit_____

Date of Audit Report_____

Prior to proceeding with the examination of financial transactions the auditor should become thoroughly familiar with Sections V and VI of this Guide, particularly Section V.D. on determining the allowability of costs, Section V.F. on compliance matters and Part II of this Audit Program. This will enable the auditor more readily to identify questionable costs and instances of non-compliance during examinations of financial transactions.

Also, prior to carrying out this Audit Program, the auditor should become familiar with the description of the project by reviewing the project application (Form ED-101 LPW for LPWI; and Form ED-101 LPW-S for LPW II), the architect/engineer files, any change orders (Form ED-1103), FMC 74-4, (Appendix E) and Attachments G, N, and O, of FMC 74-7 (Appendix F). This will enable the auditor to recognize any transactions that could be inconsistent with the purposes of the approved project plus the financial management and other administrative standards for grant performance.

The applicable parts of this program should also be used for audits of sub-grants and cost reimbursement type contracts in which the Federal share amounts to more than $25,000.

The auditor should contact the applicable DoC Regional Audit Manager if clarification of any parts of this Audit Program is needed.

NOTE: EXTRA COPIES OF THIS PROGRAM, FOR USE IN AUDIT WORKING PAPERS, MAY BE OBTAINED FROM THE DoC REGIONAL AUDIT MANAGER.

	Check When Compl.	Name & Date	W/P Ref.
Part I - Financial			
A. General			
1. Obtain and review all of the background information items listed in Section IV.E. of this Guide.			
a. With respect to contracts and purchase orders (Section IV.E.4.) in excess of $10,000, perform the audit steps provided in Addendum 3 to this Audit Program, and make a tentative selection of the other procurement actions to be tested by the audit steps in this Addendum.			
b. With respect to interim and other prior audit reports (Section IV.E.11.), analyse and ascertain whether the grantee has taken the necessary steps to carry out recommendations (if any) contained therein.			
If the grantee has not carried out recommendations, the auditor must provide a full disclosure in the audit report and consider the effect such resulting deficiencies will have with respect to qualifications of the auditor's opinions in the report.			
2. It is important that the auditor be thoroughly familiar with the basic guidelines for determining the allowability and allocability of costs under a Federal grant. These are provided in Section VI of			

	Check When Compl.	Name & Date	W/P Ref.
the Guide and in FMC 74-4 (Appendix E of this Guide).			
3. Ascertain if the grantee's costs claimed (Form ED-113A) includes indirect expenses; if so, become familiar with the conditions under which indirect expenses are acceptable for Federal grants - see FMC 74-4, Attachment A, Section B.2, C.2, F. and J. For State departments or units of State governments, the cost allocation plans and/or indirect cost proposals must be approved by the cognizant Federal agency in order for indirect costs to be accepted for any Federal grant. Units of local government are not required to submit their cost allocation plans and/or indirect cost proposal to a congizant Federal agency for approval; however, such plans and/or proposals are required to have been prepared and be available at the time the grantee's cost claim was prepared in order for such indirect costs to be considered for acceptance. In these cases the auditor should consult with the applicable DoC Regional Audit Manager (See Section VII) and obtain guidance before accepting indirect costs on LPW grants with units of local governments. The auditor should question all indirect costs claimed under any other conditions.			
4. In the event of a cost underrun on an LPW II project, the grantee may submit an Offer to Amend Grant Agreement to EDA in order to modify			

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its project. The proposed modification, when approved by EDA, will have the effect of reducing the EDA grant for the basic LPW project by a stipulated amount and transfer it to the other LPW grant. In this manner, the grantee will be able to use underrun funds from the LPW project to supplement another of its LPW projects on which there has been an overrun.			
The auditor should obtain from the grantee all approved Offers to Amend Grant Agreement and utilize the revised project cost amounts shown thereon as the EDA budgeted costs in preparing the financial statements described in Appendix A, Part II, Exhibits A and B of this Guide.			
5. Before proceeding with the examination of transactions, the auditor should have determined whether the project or any part of it involves "force account" or "fast track" procedures and accordingly be guided by Addendums 1 and 2 to this audit program. The auditor should also note that a grantee would more likely have incurred indirect costs under a force account project. Such indirect costs would likely be allocated by an indirect cost rate applied to the direct salaries of permanent grantee employees for work actually performed on the project. For any such indirect costs to be acceptable, however, the indirect cost rates must have been developed under a cost			

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allocation plan established prior to the completion date of the project.			
6. Obtain the grantee's summary of LPW costs claimed on the final Outlay Report and/or Request for Reimbursement for Construction Programs-LPW (Form ED-113A).			
a. Reconcile the LPW costs claimed by the grantee with the general ledger or other financial summary record of the grantee.			
b. Determine the reasons for any differences.			
c. Compare expenditures to the approved budget (Form ED-508 LPW) which is Attachment No. 1 to the Offer of Grant (or amendments thereto, if any). If there are any significant variations between the line items of the budget and of the actual costs, determine whether such variations represent changes in the scope or objective of the project. If so, see that the grantee has obtained the necessary approvals from EDA on Form ED-1103.			
(1) If changes in the scope (area, size, capacity, etc., of the project) or objective (such as where the application called for a recreational facility and an office building was built instead) of the project were			

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found by the auditor and no evidence of EDA approval, the auditor should proceed with the audit, but request the grantee to obtain such approval immediately. If such approvals are not obtained, the auditor should consult with the applicable DoC Regional Audit Manager before submitting the audit report.			
(2) If line item deviations are not the result of changes in the scope or objective of the project, EDA approval is not required and no costs should be questioned for this reason.			
d. In connection with the above audit steps, determine whether the grantee's accounting system was consistent with the "Accounting and Financial Management System Guidelines for the Local Public Works Capital Development and Investment Program" issued May 1977 (or as revised).			
B. Minority Business Enterprise (MBE) Requirements			
The ED-113A, final project performance and financial report to be submitted for each LPW II grant, will set forth the project costs applicable to MBEs. In order to provide accurate MBE costs for the ED-113A, the grantee should have financial records which identify and accumulate all costs applicable to MBEs.			

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(See Accounting and Financial Management System Guidelines for the Local Public Works Capital Development and Investment Program.) Such identification of MBE costs must be further supported by the Part Bs of Form ED-530, which must be submitted by each MBE. All costs claimed for an MBE organization for which the Part B of ED-530 has not been submitted to EDA must be questioned.			
Both MBE and non-MBE transactions should be subjected to the Examination of Transactions provided in the following Section C of this, Part I of the audit program. In order to provide assurance that the MBE requirements have been met, however, the following additional audit steps for MBE items should be performed:			
1. Determine the amount of MBE commitment under the LPW II grant. Unless the grantee has obtained from EDA a waiver (it may be either partial or total) of the 10 percent MBE participation, at least 10 percent of the LPW II grant amount must be spent for work done by MBE organizations. (NOTE THAT THE MBE REQUIREMENT IS ALWAYS A PERCENTAGE OF THE LPW GRANT AMOUNT - NOT THE COSTS INCURRED. Therefore, underruns or overruns will not have an effect on the dollar amount of the MBE requirement.)			
2. Determine whether the amount of accepted MBE costs is sufficient to cover the minimum MBE commitment required for the LPW II grant. If not, determine the resulting amount of cost to be questioned in			

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accordance with the following audit step.			
a. The example used in this step, to demonstrate the procedure to be followed in calculating the amount of costs to be questioned as the result of a grantee's incurring less MBE costs than required, is of a $100,000 LPW II grant for which a waiver was granted by EDA for an 8 percent MBE participation ($8,000), but the actual MBE participation was found to be only $7,000.			
(1) Deduct the amount of acceptable MBE costs ($7,000) from the minimum MBE costs required ($8,000) to arrive at the amount of the grantee's shortfall in meeting the MBE requirement ($1,000).			
(2) Divide this shortfall ($1,000) by the percentage of the LPW grant required for MBE (8%) which will produce the amount of costs to be questioned ($12,500) because of the grantee's failure to meet the MBE requirements.			
The rationale for this computation is that inasmuch as the grantee is committed to spend a certain percentage of the grant amount for services of MBEs, the grantee's entitlement to the grant funds is earned only when acceptable MBE costs			

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are incurred. Thus, in this example, for every $1,000 of acceptable MBE costs, the grantee earns entitlement to $12,500 of the grant funds.			
b. In all instances where the grantee failed to meet the MBE requirements the amount of costs questioned should be calculated as in the example above and included in Exhibit A of the audit report as an additional line (below line 10, for Contingencies) captioned "MBE Non-Compliance" with the amount shown in the "Questioned Costs" column and accordingly resulting in a reduction of the "Accepted Costs."			
3. With respect to the examination of transactions involving MBE organizations			
a. When the MBE is a prime contractor of the grantee, in addition to the review of contract documents required later in the program, also review a reasonable amount of the grantee's cancelled checks or other evidences of payments to the MBE to determine the fairness of MBE costs shown on the final ED-113A.			
THE AUDITOR IS NOT REQUIRED TO DETERMINE WHETHER THE CLAIMED MBE ORGANIZATION IS A BONAFIDE MBE.			

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b. When the MBE is a sub-contractor, examine such documentary evidence as the grantee can reasonably obtain from the contractor. In order to obtain valid evidential matter for this examination, it may be necessary to confirm directly with the MBE the amounts paid by the Contractor on the sub-contracts.			
c. In all instances verify that the grantee has obtained and submitted to EDA the Part Bs of ED-530 from all MBEs for which costs have been claimed.			
C. Examination of Transactions			
1. Based on the auditor's (i) analyses of each of the line items of expenses claimed on Form ED-113A, (ii) evaluations of the grantee's accounting system and internal controls, and (iii) the materiality of the amounts claimed, the auditor is to determine the extent to which individual transactions will be selected for examination from the budget line items of costs claimed on Form ED-113A. The auditor should prepare work papers which analyse and summarize the types of expenses claimed (wages, rent, supplies, contract progress payments, etc.) for each line item. From this the auditor should select all transactions in excess of $1,000 for examination. For this purpose transactions in excess of $1,000 include the aggregate monthly			

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rentals, wages, or any payments to the same individual or contractor of more than $1,000 during the life of the grant. The auditor's workpapers should show the extent of the testing for each of the following line items:			
a. Administrative Expense-should include such items as official travel, legal fees, rental of vehicles and any other such expenses as required to administer the grant project. If this item includes charges for salaries and wages of grantee employees or other in-house costs, such charges must be supported by documentation sufficient to enable the auditor to determine its allowability, allocability, and reasonableness in accordance with the requirements of FMC 74-4. For salaries and wages this includes time and attendance and payroll distribution records.			
b. Preliminary Expenses were eliminated by Section D3 of the Standard Terms and Conditions which states that costs incurred prior to submission of the application are ineligible. This includes any payments to firms or individuals for services rendered in preparing the application for LPW grant. ALL COSTS CLAIMED BY THE GRANTEE WHICH WERE INCURRED PRIOR TO THE RECEIPT OF THE APPLICATION BY EDA MUST BE QUESTIONED REGARDLESS OF THE LINE ITEM			

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UNDER WHICH THEY ARE CLAIMED. In addition to questioning the costs, describe the nature of the item, when it was incurred, and the circumstances relating to the transaction in sufficient detail as will enable DoC to determine whether the item or any portion thereof could be reimbursed from grant funds.			
c. Land, structures, right-of-way - None should be claimed as Section 106(b) of the Act states that no grant funds shall be used for the acquisition of any interest in real property. Question all such costs claimed.			
d. Architectural/Engineering (A/E) Fees-Basic and Other			
(1) Determine the basic eligibility of A/E costs			
This category of A/E costs should include only the expenses required for updating or completing plans and specifications required to permit construction incurred after the EDA's application receipt date. These costs must be covered by a written and executed A/E agreement acceptable to EDA. Where plans were complete at the time the application was received by EDA, no costs are eligible for this line item.			
Refer to Exhibits II-B-1b and II-B-3 of the application			

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(ED-101-LPW) and for LPW II projects refer additionally to Exhibit S-III-1 of the supplemental application (ED-101-LPW-S) and determine the degree of completion as certified by the grantee (Exhibit II-B-1a of ED-101-LPW). If the grantee certified that all plans were complete, question all A/E costs claimed and discuss with the grantee. If grantee claims that the certification was in error, obtain from the grantee details showing exactly what additional work was performed to complete plans and specifications after the application was received by EDA, and the costs thereof. Verify accuracy of statements made by grantee by examining A/E invoices and include a complete explanation in the results of audit section in the report, but question all A/E costs claimed. (2) Determine the Eligibility of Other A/E Fees This category of A/E costs includes all the A/E costs not includable as basic fees. Other A/E costs incurred prior to EDA's receipt of the grant application are ineligible.			

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Eligible costs incurred after the application receipt date must be covered by a written and executed A/E agreement acceptable to EDA. If Project Management services are approved by EDA, the costs should be included in this line item. Other A/E services performed on LPW II projects must be performed by contract. EDA has determined that all expenses for other A/E services performed directly by public employees are ineligible for reimbursement under LPW II projects. This decision was based on EDA Legal's interpretation of Section 103(a) and 106(e) (1) of the LPW Act, as amended (i.e., P.L. 94-369 as amended by P.L. 95-28). EDA gave notice of this interpretation in the Federal Register on October 13, 1977. (3) Where A/E services are provided by other than public employees, review the grantee's procedures for contracting for eligible A/E services. It is the responsibility of the grantee in contracting for A/E services to take reasonable measures to ensure that services are obtained from qualified firms at a reasonable price. Agreements			

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between grantees and A/E firms covering A/E services take a number of forms. The payment/reimbursement provisions contained in such agreements vary from a single fee covering all services to separate fees for each phase of work, or combination thereof. Historically, the payment/reimbursement for engineering services has been based upon: (i) lump sum contract amounts, (ii) fixed labor hour rates, (iii) percentage of estimated construction costs (fee curve), and/or (iv) actual labor costs plus a stipulated multiplier for overhead and profit (cost-plus-a-percentage-of-cost).			
Paragraph 3.C.(8) of 74-7 requires the grantee to maintain procurement records for all negotiated contracts in excess of $10,000. Where tht total costs for A/E services exceed $10,000 the grantee's procurement records should be reviewed to determine whether the documentation therein indicates:			
(a) The procurements were conducted so as to encourage maximum open and free competition. (Even though the contract may be negotiated, competition should be obtained to the			

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maximum extent practicable.)			
(b) Efforts were made to assure that agreements were made only with responsible firms that possessed the potential ability to perform successfully, and consideration was given to such matters as contractor integrity, record of past performance, and financial and technical resources.			
(c) The contractual language in the Agreement is specific enough to identify the services and costs thereof to be provided under each phase of the Agreement(s).			
(d) The Agreement clearly sets forth the costs for services rendered prior to EDA's application receipt date. Costs incurred prior to EDA's application receipt date are ineligible costs.			
(e) The grantee performed a negotiation to establish the reasonableness of compensation. As a minimum, this negotiation should include a cost review to determine			

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the composition of cost and the profit proposed by the A/E.			
A review of the proposed costs in the Agreement is considered adequate if			
(i) the grantee's in-house engineering staff develops an independent detailed cost estimate which when compared to the proposed A/E cost estimate demonstrates the reasonableness of the proposed amount;			
(ii) the grantee performs a verification of the proposed costs and quantities to the data used by the engineering firm in developing the proposal; or			
(iii) sufficient cost and pricing data for work similar to this project are available and used for comparision.			
The multiplier and percentage-of-construction cost (fee curve) methods of compensation do not result in a reasonable price in the absence of an effective			

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negotiation based on current cost data. The multiplier method, which provides for actual labor cost plus a stipulated multiplier for overhead and profit, represents a form of cost-plus-a-percentage-of-cost contracting. This form of contracting is specifically prohibited by paragraph 3.C.(4) of Attachment O to FMC 74-7. Therefore, all reimbursements based on this method of contracting are unallowable under an LPW grant and must be questioned in the audit report.			
Paragraph 3.C.(4) of Attachment O to FMC 74-7 also forbids the use of procurement forms that are not appropriate. The percentage-of-construction-cost procurement forms has been seriously questioned in recent years both by members of the A/E profession and experienced clients on the grounds that construction cost is not determined by either but rather by the contractor and that			

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compensation may bear little relationship to the actual effort expended or the expertise of the A/E firm. Because of this inherent inequity, the Department of Commerce does not consider the percentage-of-construction-cost to be an appropriate method for procuring A/E services. In all cases where adequate negotiations were not held, including all cases where negotiations result in a cost-plus-percentage-of-cost agreement, all costs for A/E services should be questioned, and the audit report should fully explain the inadequacies of negotiations.			
(4) Verify the costs of all eligible A/E services provided by contract (See Addendum 1 of the Audit Program, for A/E services performed by public employees, i.e., by force account). (a) Determine the amount of charges for A/E services. (This should be detailed by services			

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billed under the various methods of reimbursement, e.g., lump sum, fixed labor hour rates, etc.)			
(b) Determine that the cost of A/E services claimed by the grantee do not include charges related to ineligible activities, as described in Section VI of this Guide. The A/E's invoice should be in sufficient detail to clearly define the scope of the work performed.			
(c) Verify the mathematical accuracy of the billing for A/E services and test grantee payments for A/E services to vouchers and cancelled checks.			
(d) Question all A/E costs claimed that do not meet the eligibility criteria contained herein. Include in the report a complete explanation of each such situation and the basis for questioning the costs.			
e. Project Inspection Fees - Fees for inspection and audit of construction and related programs, accrual of final audit fee, and salary of a project coordinator (if previously approved by EDA). Salary of			

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project coordinator should be separately identified.			
f. Land development - None should be claimed as this line item relates only to projects where the primary purpose of the grant is land development. The land development costs incidental to construction should be included on line item k of the Outlay Report and/or Request for Reimbursement for Construction Programs--LPW (page 2 of Form ED-113A).			
g. Relocation Expenses - Costs for providing relocation advisory assistance, and the net costs for replacement (last resort) housing. Relocation administrative expenses should be included on line item a, "Administrative Expenses."			
h. Relocation Payments to Individuals and Businesses - Relocation payments made to displaced persons, business concerns, and non-profit organizations for moving expenses and replacement housing. The displacement, however, must have occurred in behalf of property specifically acquired for the LPW project.			
Note: Costs in items g and h above incurred under the "Uniform Relocation Assistance and Real Property Acquisition Act of 1970" are allowable even though they may have been			

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incurred prior to the date of submission of the application to EDA and the cost of the real property is ineligible for reimbursement from LPW funds. (See Appendix D, Part I for the types of expenses allowable for reimbursement under this Act.)			
i. Demolition and Removal - the contract for this work must conform with the requirements of the standard terms and conditions of the grant and EDA instructions. The structures to be demolished and removed must be described in the contract. The costs of this line item must be reduced by the amount of expected proceeds from the sale of salvage, if so instructed by EDA.			
j. Construction and Project Improvement - the contract for this work must conform with the requirements of the standard terms and conditions of the grant and EDA instructions. The contract must describe the actual construction of, addition to, or restoration of a facility, including such project improvements as sewers, streets, landscaping, lighting, etc.			
If the grantee uses any of its own materials or employees in the performance of the work, Addendum 1 to the Audit Program should be used for the audit of such costs.			

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k. Equipment - Costs of equipment, both fixed and movable, exclusive of equipment used for construction. For example, include amounts for permanently attached laboratory tables, built-in audio-visual systems, movable desks, chairs, and laboratory equipment.			
2. In addition to the examination of the above line item expenses as to proper line item classification, adequacy of supporting documents, etc., where the transaction represents a payment resulting from a procurement action (purchase order or contract), the auditor is to select a representative number of such procurement actions (including at least all those in excess of $10,000) for examination in accordance with Addendum 3 of the Audit Program.			
a. Were the amounts paid in accordance with contract provisions?			
b. Was there evidence that the contracted goods and/or services were:			
(1) Actually provided?			
(2) Actually used?			
c. Have all cost reimbursement type contracts in excess of $25,000 been audited?			
3. Consider the results of the work performed in Addendum 3 and Steps C1 and C2 above and determine what			

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costs, if any, should be questioned on Exhibit A of the audit report.

If costs are questioned, refer to Step A.6.c. above and determine whether the costs questioned represent changes in the scope of the project.

Part II - Compliance

A. Compliance matters that can be readily related to items of expense are covered in examination steps in Part I above. Certain other compliance matters, although not directly related to specific line items of expense, must be included in the auditor's examination in order to provide assurance that the costs claimed and the status of grant funds have been fairly stated.

For each specific step, determine, based upon tests performed, that documentation has been maintained by the grantee which indicates compliance with the following applicable areas:

1. Grantee must not make drawdowns against the letter of credit prior to the time funds are needed for reimbursement of eligible costs incurred.

If the grantee is a unit of local government and made drawdowns in excess of actual LPW cash requirements and thus was able to derive income from the excess cash, such interest must be returned to the Federal Government in accordance with a decision of the Comptroller General of the United

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States (42 Comp. Gen. 289). If such a condition is disclosed, the auditor is to describe the situation in the report and identify the amount of interest involved.			
2. Section 109 of the LPW Act requires that all laborers and mechanics employed by contractors or sub-contractors be paid wages not less than those determined for the locality of the project by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 USC 276a - 276a-5). The Standard Terms and Conditions of the LPW I and II grants, in turn, make the grantee responsible for assuring that these requirements are met. The Davis-Bacon Act LPW grantee reporting requirements are explained in EDA's "Engineering and Construction Guidelines for the Local Public Works Capital Development and Investment Program" (First edition, paragraph 5 for LPW I grants; Second edition, paragraphs 3 and 4 for LPW II grants. Also, see ADDENDUM 4 to the Audit Program.)			
a. Determine whether the grantee has developed a system to monitor applicable contractors and sub-contractors with respect to payment of "Davis-Bacon" wages. Test grantee's practices and records to evaluate adequacy of its system to assure compliance with these requirements.			

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b. If the grantee has not developed a system to monitor applicable contractors and sub-contractors so as to assure compliance with "Davis-Bacon" requirements or if the system developed for this purpose has not operated effectively so as to determine whether compliance had been obtained then,			
(1) obtain the applicable DOL wage determination from the grantee, the A/E or the EDA Regional Office.			
(2) Select a representative sample of payroll forms submitted by each contractor or sub-contractor subject to the "Davis-Bacon" requirements. These payroll forms may be obtained either from the grantee or the A/E.			
(3) Compare the payroll forms obtained in (2) above with the DOL wage determination obtained in (1) above to determine compliance for each contractor or sub-contractor.			
c. Determine whether all construction contracts and sub-contracts contain appropriate provisions that "Davis-Bacon" wages shall be paid.			
d. Provide details in the audit report of any non-compliance with "Davis-Bacon" requirements noted in a., b. and c. above.			

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For any contractors or sub-contractors which you find did not comply with the "Davis-Bacon" requirements, question all the costs claimed for the services provided by each.			
Note: If the auditor is unable to locate the applicable DOL wage determination, he/she should ask the applicable Regional Audit Manager to furnish it.			
3. Use of underrun funds may be approved by EDA and cannot be used to purchase expendable items, motor vehicles, or real property.			
4. Grantee furnished equipment and/or materials - In order for the costs of such items to be included under any LPW grant, the grantee must have documentary evidence to show that:			
a. The items were adequate for their proposed usage, and			
b. The costs of the items were competitive with the local market.			
c. The amount charged to the grant did not exceed the cost to the grantee or that it was an equitable allocation of such costs to the grant.			
5. Sales Tax - In some States the grantee or its contractors may be eligible for rebate of sales taxes paid in obtaining materials and services for construction of the			

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project. Any sales tax refund for which the grantee or its contractors may be eligible should be deducted from project costs. If this has not been done the auditor should determine if any sales tax paid has been or is eligible to be refunded and show the amount as Cost Questioned in the audit report.			
6. Purchase Discounts, Rebates, and Allowances - Costs charged to the project should be the net cost after deducting any purchase discounts; rebates and allowances received; and any adjustments for overpayments or erroneous charges. In addition, project costs should be reduced by any income derived from the sales of any scrap, salvage, stumpage, excess property, etc., which resulted from work of or purchases charged to the project. If this has not been done the auditor should make appropriate comments in the audit report and question costs related to any of the following matters:			
a. Any cost reductions which have occurred;			
b. The disposition made of any excess materials and equipment remaining after the project is completed, and			
c. The disposition and/or the anticipated dispositon to be made of any scrap or salvage resulting from construction of the project.			

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7. Interest costs are ineligible except when EDA is supplementing another program in which interest costs are legislatively authorized. If interest costs are acceptable, state basis for acceptance in the audit report.			
8. Maintenance costs are ineligible under the Act. Maintenance costs are defined as any costs which are incurred as a result of routine actions prescribed to be carried out on a generally scheduled basis in order to keep property and equipment operating at its specified efficiency for its normal expected life. This can include the repair and/or replacement of minor components or assemblies as long as such repair and replacement is included on the recurring maintenance schedule and does not materially increase the value, efficiency, or useful life of the property and equipment, beyond that originally contemplated.			
9. Nonexpendable personal property acquired with Government funds must be retained and disposed of in accordance with Attachment N of FMC 74-7.			
a. Accurate property records must be maintained.			
b. Physical inventories must be taken at least once every two years and reconciled with the property records.			

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10. Any income earned except interest on advances of Federal funds (See Step A1 above) by the project between the dates of approval and completion of the project must be accounted for by reducing the net cost or by adding to the project funds to further eligible program objectives as provided in FMC 74-7, Attachment E (See Appendix F). Any such income must be described in the audit report and noted on Exhibit A of Attachment 1 to the audit report.			
11. The grantee must notify EDA promptly whenever the amount of the authorized grant is expected to exceed the needs of the grantee by $5,000, or five per cent of the grant, whichever is greater.			
12. Contract change orders must include detailed description of work, and be dated and approved by Architect/Engineer.			
13. Contingent fees - Any fees paid to an individual or an organization for preparing or providing consultant services on the LPW grant application or for providing any other services related to the grant, the payment of which was contingent on the approval of the grant, are unallowable. Any such fees found in the auditor's examination of the line item expenses must be questioned and explained in the audit report. (See ADDENDUM 4 to the Audit Program.)			

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14. The LPW grant application (Form ED-101 LPW, Part II, Section B) plus 13 CFR 316.10(f) for LPW I applications and 13 CFR 317.16(a) for LPW II applications require the grantee to provide EDA with an opinion from an acceptable Title Counsel which describes the interest the applicant has in the site and certifies that the estate or interest is legal and valid. EDA's procedures require that prior to approval of any LPW project application the prospective grantee must have obtained rights to the project site, including easements and rights-of-way, in one of the following ways: (i) by owning the project facility and/or site clear of any encumbrances; (ii) by holding a non-cancelable long-term lease on the project facility and/or site which is defined as 20 years or the useful life of the facility, whichever is longer; (iii) by holding a clearly enforceable option through time of grant approval to purchase the project facility and/or site, and demonstrating that sufficient funds are available to complete the purchase. The auditor should obtain, from the grantee, the opinion of its attorney or Title Counsel that the grantee has legal and valid interest in the project site. If the required opinion is not obtained, or the title opinion does not specifically cover the site where the LPW project has been			

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constructed, or the auditor has any reason to believe the project was constructed at a site to which the grantee has not obtained the necessary rights, including easements and rights-of-way, the auditor should disclose this situation and the pertinent circumstances in the audit report.			
The following steps apply only to grants approved under the Public Works Employment Act of 1977:			
15. The Act of 1977 provides that "Except to the extent that the Secretary determines otherwise, no grant shall be made under this Act for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises. For purposes of this paragraph, the term 'minority business enterprise' means a business at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members. For the purposes of the preceding sentence, minority group members are citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts."			
a. If the grantee has obtained a waiver from EDA approving something less than 10 per cent			

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MBE participation, examine documentation and describe in audit report.			
b. Follow audit steps of Part I.B, of this program to determine the grantee's compliance with the MBE requirement. Generally, Exhibit A and its Reference Notes should supply adequate information on the grantee's compliance with MBE requirements. If appropriate, additional information could be supplied in the Compliance Attachment of the audit report.			
16. The Act of 1977 provides that "Notwithstanding any other provision of law, no grant shall be made under this Act for any local public works projects unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States, will be used in such project."			
This provision "shall not apply in any case where the Secretary determines it to be inconsistent with the public interest, or the cost to be unreasonable, or if articles, materials, or supplies of			

	Check When Compl.	Name & Date	W/P Ref.
the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality."			
Review the grantee's system for ensuring compliance with this provision, particularly as the system provides for this compliance requirement to be incorporated in agreements of contractors and subcontractors working on the LPW project. (See ADDENDUM 4 of the Audit Program.)			
Reporting Instructions			
The auditor is to provide an opinion based upon tests of transactions concerning the grantee's compliance with the items listed in II A above.			
If instances of non-compliance were found, the report is to describe the situation(s) in sufficient detail to enable EDA to determine the disposition to be made of the reported instances of non-compliance.			
B. Other compliance matters are of a more general nature and can be reported on an exception basis. If, after satisfying himself that the grantee's internal controls are reasonably adequate to assure compliance, and during the course of the audit the Auditor does not observe or does not obtain information in discussions with			

	Check When Compl.	Name & Date	W/P Ref.
grantee and contractor personnel that would indicate possible non-compliance, the auditor should consider his responsibilities to cover the following compliance matters fulfilled.			
The following items apply to all LPW grants:			
1. Quarterly performance reports must be submitted on January 15, April 15, July 15, and October 15 in accordance with Attachment I of FMC 74-7.			
2. The Contract Work Hours Standards Act, as amended (40 USC 327-332). (See ADDENDUM 4 of the Audit Program.)			
3. The Copeland "Antikickback" Act, as amended (40 USC 276(c); (18 USC-874).			
4. Title VI of the Civil Rights Act of 1964, as amended (See Standard Terms and Conditions, pages 2-5).			
5. Section 106(a) of the LPW Act disqualifies any project having as its principal purpose the modification of a canal or waterway.			
6. The grantee and each of its contractors and sub-contractors must have property management, project performance, financial management, payrolls, and such other reporting documents, books, records and systems as the Government may require.			

	Check When Compl.	Name & Date	W/P Ref.
7. The project will be subject to termination if any official, employee, or independent provider of personal services to the grantee or any representatives of Federal, State or local government becomes directly or indirectly interested financially in the project.			
8. If the design of the project was not completed at time of approval, the grantee must submit quarterly performance reports and a final report on the status of the project design.			
9. The grantee may use its own procurement regulations provided that such regulations adhere to the standards set forth in Attachment O of FMC 74-7, as amended.			
10. If the grantee chooses to em-employ a Project Coordinator and use him as a comptroller authorized to disburse project funds, then the Project Coordinator must be bonded in the amount normally required by fiscal agents of the grantee.			
11. Cash depositories for project funds must be in accord with Attachment A of FMC 74-7.			
12. Bonding of fund custodians must be in accord with Attachment B of FMC 74-7.			
13. Project financial records must be retained and cared for as required by Attachment C of FMC 74-7.			

	Check When Compl.	Name & Date	W/P Ref.
The following items apply only to grants approved under the Public Works Employment Act of 1977:			
14. Aliens illegally in the country must not be employed on the project. (See ADDENDUM 4 of the Audit Program.)			
15. Public employees shall not be employed on the project except for the performance of auditing, legal services, accounting, procurement and contracting, and other financial management activities and the architectural and engineering services required to complete and update plans, specifications and estimates where either architectural design or preliminary engineering or related planning has already been undertaken, and where additional architectural and engineering work or related planning is required to permit construction of the project.			
16. The Act of 1977 provides that "The Secretary of Commerce, in consultation with the Secretary of Labor, and consistent with existing applicable collective bargaining agreements and practices, shall promulgate regulations to assure special consideration to the employment in projects under this Act of qualified disabled veterans (as defined in Section 2011(1) of title 38, United States Code) and qualified Vietnam-era veterans (as defined in Section 2011(2) of such title 38) (See ADDENDUM 4 to the Audit Program.)."			

	Check When Compl.	Name & Date	W/P Ref.
Reporting Instructions If any instances of noncompliance were observed, the report will describe the situation in sufficient detail to enable EDA to determine the disposition to be made of the matter.			

Audit Program - Additional Steps Applicable to Force Account Projects

The applications for force account projects include Exhibits II-B-1c and II-B-1d, which are applicable only to force account projects and are not a part of the grantee's application for a construction contract project. The auditor should become familiar with these Exhibits before proceeding with an audit of a force account project. Force account projects are not to be funded under the Act of 1977, except as approved by the Secretary.

	Check When Compl.	Name & Date	W/P Ref.
Part I - Financial			
Where the line item costs claimed by the grantee include salaries and wages of personnel employed by the grantee, and materials and supplies purchased by the grantee, the Audit Program must include the following steps:			
A. Examine grantee's personnel and payroll policies and procedures as follows:			
1. Are records kept on personnel actions including hiring, promotion, dismissal, and resignation of both full-time and part-time employees?			
2. Are procedures adequate to assure that employees are paid in accordance with the grantee's established wage and salary structure?			
3. For newly hired workers for positions in the grantee's existing wage structure, are their wage rates the same as were paid the employees in those positions prior to the date of the grant application?			

	Check When Compl.	Name & Date	W/P Ref.
4. For newly hired workers for positions not in the grantee's existing wage structure: Are their wages consistent with the rates paid for similar work by other activities of the local or State Government?			
5. In connection with the above steps, note whether the job classification and wage rates supplied on Attachment No. 1 of Exhibit II-B-1c of the application are consistent with the grantee's wage structure. If not, obtain explanation.			
B. Examine personnel costs charged to the LPW project as follows:			
1. Trace amounts posted in the general ledger or other LPW project cost control records to the payroll register of other supporting documents.			
2. Select a representative number of payroll postings (use a statistical sample, if appropriate) and verify the following:			
a. That the salary or wage rate of each individual whose pay is tested was in agreement with the grantee's wage structure and Attachment No. 1 of Exhibit II-B-1c.			
b. The hours paid are based upon properly approved time sheets or other supporting documents.			

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	Check When Compl.	Name & Date	W/P Ref.
c. The hours charged were only for work performed on the LPW project.			
d. The amounts of wage paid were properly computed.			
e. Accrued sick or vacation pay was earned and paid in accordance with the grantee's established personnel policies.			
3. For grantees whose employees are also involved in other projects, conduct floor checks or interviews with personnel as necessary to assure that the employees' time was being recorded for the proper project and/or indirect labor category.			
4. Force account projects are required to have a Project Coordinator and a Construction Superintendent, or for small projects one person may handle both positions. Ascertain how the grantee has filled these jobs, see that the EDA office has been properly notified, review the work performed for each position and compare with the EDA guidelines for these positions. Identify the costs charged to the project for these positions, and determine whether such costs reliably represent the time expended on the LPW project and the related fringe benefits and other expenses.			
5. Ascertain whether personnel costs charged to the LPW project include wages of regular or			

	Check When Compl.	Name & Date	W/P Ref.
permanent employees of the grantee, if so:			
a. Identify those that serve in a supervisory or professional capacity such as Construction Superintendent, Project Coordinator, Foreman, Engineer, Surveyor, Inspector or Procurement Officer. Generally these represent eligible costs.			
b. Identify any others not fitting above descriptions and determine their eligibility by reference to EDA instructions.			
Consider the results of the work performed in the above steps, terms of the grant, and other cost principles incorporated therein and determine whether the personnel costs charged to the LPW grant can be supported by payroll distribution records which identify the time expended by the grantee's personnel in the performance of work on the LPW project. Question all costs that do not meet these requirements.			
C. Examine fringe benefit costs charged to the LPW project as follows:			
1. Trace amounts posted in the general ledger or other LPW project cost control records to supporting documents and determine the nature of the benefits involved.			
2. Review the State or local government (whichever applicable) approved personnel policies and procedures and determine the types of fringe benefits authorized.			

	Check When Compl.	Name & Date	W/P Ref.
3. Determine whether the fringe benefit costs charged:			
a. Are for the types of fringe benefits authorized in the grantee's approved personnel policies.			
b. Are for items which would not normally be considered fringe benefits.			
c. Are for items which may be duplicated in direct labor such as annual leave, sick leave, or holiday pay.			
d. Are allocated to projects in accordance with FMC 74-4, and that documentation exists to support its consistent application to all of the grantee's activities.			
Consider the results of the work performed in above steps, terms of the grant, and other cost principles incorporated therein and determine whether the fringe benefit costs are allowable and allocable to the LPW project.			
D. The costs accumulated for line items "Demolition and Removal" and "Construction and Project Improvement", for force account projects, include the costs of equipment rentals and materials and supplies purchased by the grantee. The auditor's examination of these costs should include, in addition to the usual check of supporting documents, mathematical accuracy, proper description, and conformance with the cost principles of FMC 74-4, the			

	Check When Compl.	Name & Date	W/P Ref.
determination of compliance with Sections 26 and 27 of the Force Account Engineering and Instruction Guidelines for the following items:			
1. Review the grantee's documentation which shows that the costs of such items are competitive with the local market.			
2. Determine that all such costs are net of all cash or trade discounts offered, irrespective of the fact that such discounts may not have been taken.			
3. If materials are obtained for the project other than by direct purchase from the supplier, determine the eligible cost thereof to be the price actually paid to the supplier (less any discounts). No markup other than actual handling costs will be permitted.			
4. If materials are obtained from a supply source wholly or partly owned by the grantee, the eligible costs thereof shall not exceed the price paid by other purchasers from said source, or the current wholesale market price for such material delivered to the job site, whichever is lower. The grantee must furnish sufficient evidence to the auditor so that a determination as to reasonableness of cost can be made.			
5. For equipment rentals the auditor should determine whether the type of equipment and rental rates paid are consistent with those accepted by EDA in Attachment			

	Check When Compl.	Name & Date	W/P Ref.
No. 2 of Exhibit II-B-1c of the application that the Architect/Engineer has approved the suitability and working condition of the equipment. The rental rates for the equipment must include all expenses related to the operation of the equipment except the wages of the operators who will be paid as direct employees of the grantee unless EDA approves rental agreements which include the operators in the rental rates.			
6. For the computation of the rental time of equipment use, the auditor should ascertain that the grantee has adequate procedures for maintaining accurate time records and that the method of computing time charges is consistent with those in the Construction Guidelines for Force Account Projects.			
Part II - Compliance			
A. Davis-Bacon Act wage requirements are not applicable to the wages paid to employees of the grantee.			
B. The Public Works Employment Act of 1977 provides that force account projects will be approved only when the Secretary finds it to be in the public interest.			
For any force account work performed on a grant under the 1977 Act, the auditor must determine that proper approval had been obtained.			

Audit Program - Additional Steps Applicable to Simultaneous Design and Construction (Fast-Track) Projects

Fast-track projects can be either contract or force account projects or a combination of both. Therefore, audit steps appropriate to contract and force account projects will still be used. Additional audit steps will be required because of the increased significance of A/E fees. Inasmuch as one of the criteria for an LPW project was that construction could start within 90 days, plans and specifications would have to be complete or nearly so at the time of the application. Only costs for completing plans and specifications incurred after approval of a fast-track project are eligible costs under an LPW grant. In accordance with Attachment O of FMC 74-7, any payments of A/E fees based upon a percentage of costs are unacceptable for any type of project. For A/E costs which are otherwise acceptable the auditor should consider the following additional audit steps:

	Check When Compl.	Name & Date	W/P Ref.
Part I - Financial			
A. Review grantee's files on negotiations of A/E agreements and determine whether the documentation therein indicates:			
1. The procurements were conducted so as to encourage maximum open free competition.			
2. Efforts were made to assure that agreements were made only with responsible firms that possessed the potential ability to perform successfully and consideration was given to such things as record of past performances and financial and technical resources.			
3. The agreements clearly differentiate between the services provided before the application and those provided after and identify the costs incurred for each.			

	Check When Compl.	Name & Date	W/P Ref.
4. The agreements clearly define the scope of the services to be provided and identify the services and related reimbursements provided under each phase of the agreement.			
5. In the negotiation of A/E agreements the grantee established the reasonableness of the fees by such means as obtaining cost and pricing data for the various phases of the work, consultations with grantee's own engineering staff, obtaining independent data, etc.			
After considering the above steps the auditor should determine whether the grantee's procedures and internal controls provided protection against excessive A/E fees. If such protection was not afforded, the A/E fees should be questioned with the recommendation that EDA make a technical evaluation of A/E services and related fees.			

Audit Program Applicable to Procurement Actions

Note: The following audit steps are designed to be applied to each procurement action over $10,000, and others selected by the auditor for examination. Additional copies of this program should be prepared for the results of the examination of each action. A "Yes" answer should be given when the auditor examines documentation maintained by the grantee which indicates compliance in the following applicable areas.

Identification Data

Contractor:

Name: _____

Address: _____

Contract No. _____ Date of Contract _____

Amount of Contract $_____ Type of Contract _____

Period of Performance _____

Description of materials or services to be provided:

	Yes/No
A. Applicable to all procurements.	
1. Was the procurement made in a manner so as to provide maximum open and free competition?	
2. Had the procurement been reviewed by grantee officials to avoid purchasing (i) unnecessary or duplicative items, and (ii) from suppliers who were irresponsible or did not have sufficient financial or technical resources?	

	Yes	No
3. Were efforts made to utilize small business and minority-owned business sources?		
4. Was the type of procuring instrument used (i.e., purchase orders, fixed price, incentive, or cost reimbursable contracts, etc.) appropriate for the procurement? "(Cost-plus-a-percentage-of-cost" method of contracting cannot be used.)		
5. Does the agreement clearly describe the material or define the scope of the services to be provided and the amounts to be reimbursed for such material or services?		
6. Was procurement followed-up to assure conformance with terms and specifications, timely performance?		
7. Were the bonding requirements of FMC 74-7, Attachment B observed if procurement was a construction contract in excess of $100,000?		
B. Competitive Bid Procurement.		
1. Did the invitation for bid or request for proposal provide a clear and accurate description of the technical requirements for the material, product, or service to be procured?		
Did such description contain any features which might unduly restrict competition?		
2. Were the procedures of formal advertising, sealed bids and public opening followed?		

	Yes/No	
3. Was the award made to a responsible bidder whose bid was responsive to the invitation and was the most advantageous to the grantee, considering price and other factors?		
C. Negotiated Procurement.		
1. Did the procurement qualify to be negotiated under any one of the following criteria?		
a. Public exigency.		
b. Sole source.		
(1) If over $5,000 approved by EDA.		
c. Does not exceed $10,000		
d. Personal or professional services.		
e. Service rendered by educational institution.		
f. No acceptable bid from formal advertising.		
g. Highly perishable material or medical supplies.		
h. Price of material or services established by law.		
i. Otherwise authorized by law, rules, or regulations.		
2. Notwithstanding meeting any of the above qualifications for negotiation, was competition obtained to the maximum extent practicable?		

	Yes/No	
3. For purchases in excess of $10,000, were records maintained showing the justification for negotiation, contractor selection, and basis for establishing the reasonableness of the price negotiated?		
4. For negotiated contract in excess of $10,000, did it include provision that the grantee, Federal grantor agency, the Comptroller General of the U.S. or any of their duly authorized representatives shall have access to any books, records, etc., pertinent to making an audit?		

Reporting Instructions

Review the "No" answers in Sections A, B, and C above and determine whether any costs claimed should be questioned and/or any comments should be made in the report. In either case describe circumstances in sufficient detail to enable EDA to determine the disposition to be made of the matter.

Auditor_____

Date_____

Workpaper Reference_____

SYNPOSIS OF SELECTED STATUTORY REQUIREMENTS INCLUDED IN LPW GRANTS

This Addendum provides an abbreviation of selected statutory requirements and EDA guidelines which should be considered in auditing the LPW grants, but which are not summarized elsewhere in this Audit Guide. The explanations provided below for each of the six subjects presented is general in nature so they should not be construed to represent a complete legal explanation of these subjects. In those cases where a question of law arises, the full text of the applicable statute and EDA regulation should be consulted.

1. Contract Work Hours and Safety Standards Act-- Overtime Compensation1/

Each grantee must operate under policies and procedures which provide assurance that the contractors and subcontractors engaged on the LPW project are complying with the overtime compensation provisions of the Contract Work Hours and Safety Standards Act. The following excerpts from the Contract Work Hours and Safety Standards Act describe the requirements placed upon the contractors and subcontractors.

a. A contractor shall not require or permit any laborer or mechanic, including apprentices, trainees, watchmen, and guards, in any workweek in which he is employed on any work under this contract, to work in excess of 8 hours in any calendar day, or in excess of 40 hours in such workweek, or work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic, including apprentices, trainees, watchmen, and guards, receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the contractor's contribution or cost for fringe benefits, and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

b. In the event of any violation of the provisions of paragraph a., a contractor shall be liable to any

affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including an apprentice, trainee, watchman, or guard, employed in violation of the provisions of paragraph a. in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of overtime wages required by paragraph a.

2. Davis-Bacon Act2/

Each grantee must operate under policies and procedures which provide assurance that the contractors and subcontractors engaged on the LPW project are complying with the Davis-Bacon Act. The following excerpts from the Davis-Bacon Act describe the requirements placed upon the contractors and subcontractors.

a. All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR, Part 3)), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the grantee, contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by contractors at the site of the work in a prominent place where it can be easily seen by the workers.

b. A contractor may discharge his obligation under this clause to workers in any classification for which the wage determination decision contains:

(1) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations (29 CFR, Part 3); or

(2) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of bona fide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed, during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and a contractor pays in cash equivalent or provides an alternative fringe benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where a contractor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the grantee shall submit the question, together with his recommendation, to EDA for forwarding to the Secretary of Labor for final determination.

c. The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in Section 1(b)(2) of the Davis-Bacon Act or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by a contractor. The Secretary of Labor may require a contractor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

d. The grantee shall require that any class of laborers or mechanics, including apprentices and trainees, which is to be employed under the contract and which is not listed in the wage determination decision, be classified or reclassified to conform with the wage determination decisions, and the action taken reported

to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including apprentices and trainees, to be used, the grantee shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

e. In the event it is found by the grantee that any laborer or mechanic employed by a contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph a. of this clause, the grantee may (i) by written notice to the general contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (ii) prosecute the work to completion by contractor or otherwise, whereupon such contractor and his sureties shall be liable to the grantee for any excess costs occasioned the grantee thereby.

3. Convenant Against Contingent Fees3/

In accordance with LPW Standard Terms and Conditions, the grantee represents that it has not paid, and also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for grant assistance.

4. Employment of Illegal Aliens4/

Each LPW II grantee must ensure that no contract for the project will be awarded to a bidder who will employ on the project any alien who is in the United States in violation of the Immigration and Nationality Act or any other law, convention or treaty of the United States relating to the immigration, exclusion, deportation or expulsion of aliens. EDA instructions provide that compliance with this requirement could be achieved by the grantee taking such actions as obtaining agreements from its contractors that:

a. Information on place of birth and citizenship status will be obtained from all prospective employees.

b. Citizenship status of foreign-born job applicants will be confirmed with the Immigration and

Naturalization Service of the U.S. Department of Justice.

5. Use of U.S. Made Products and Raw Material5/

When manufactured goods are to be used in the construction of an LPW Round II project, the grantee must ensure that only manufactured goods made in the United States and substantially made from raw materials mined or produced in the United States are used in that project. Also, when unmanufactured raw materials are to be used in the construction of an LPW Round II project, the grantee must ensure that only unmanufactured raw materials mined or produced in the United States are used on that project. Unless a waiver is granted by EDA, the raw materials and/or components and subassemblies used in producing any and all equipment and materials used in the project must have been mined or produced in the United States.

6. Employment of Veterans6/

Each grantee must ensure that special consideration, consistent with applicable collective bargaining agreements and practices, is given to the employment on the project of qualified disabled veterans and qualified Vietnam-era veterans.

The term "disabled veteran" means either (1) a person entitled to disability compensation under laws administered by the Veterans' Administration for disability rated at 30 percent or more; or, (2) a person whose discharge or release from active duty was for disability incurred or aggravated in the line of duty (38 U.S.C. 2011 (1)). The term "Vietman-era veteran" means either a person who served on active duty for a period of more than 180 days, any part of which occurred during the "Vietman-era" and who was not dishonorably discharged; or, a person who served on active duty for any period of time during the Vietnam-era and who was discharged or released from active duty for a service connected disability (38 U.S.C. 2011 (2) (A)).

Grantees should inform contractors and local trade unions of the requirements, and promote specific planning for compliance.

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1/ The information contained herein was extracted from a description of the applicable act as contained in the Armed Services Procurement Regulations and was adapted to meet the LPW situation.

2/ Ibid.

3/ Ibid.

4/ Informational extract obtain from EDA's publication "Legal Requirements Applicable to Projects Funded Under the Public Works Employment Act of 1977."

5/ Ibid.

6/ Ibid.

Appendix C contains a copy of Public Law 94-369 as amended by Public Law 95-28. This public law contains the basic legislation applicable to the LPW program. THE AMENDED SECTIONS, WHICH APPLY ONLY TO LPW II, ARE SHOWN IN ITALICS.

Public Law 94-369
94th Congress, S. 3201
July 22, 1976

Public Works Employment Act of 1976, 42 USC 6701

as amended by

PUBLIC LAW 95-28

91 STAT. 116

MAY 13, 1977

Public Works Employment Act of 1977.

An Act

To authorize a local public works capital development and investment program, to establish an antirecessionary program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Works Employment Act of 1976".

NOTE 1

TITLE I—LOCAL PUBLIC WORKS

Local Public Works Capital Development and Investment Act of 1976, 42 USC 6701

SEC. 101. This title may be cited as the "Local Public Works Capital Development and Investment Act of 1976".

SEC. 102. As used in this title, the term—

Definitions.

(1) "Secretary" means the Secretary of Commerce, acting through the Economic Development Administration.

(2) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, *American Samoa, and the Trust Territory of the Pacific Islands.*

(3) "local government" means any city, county, town, parish, or other political subdivision of a State, and any Indian tribe.

Public works project.

(4) 'public works project' includes a project for the transportation and provision of water to a drought-stricken area.

Grants, 42 USC 6702.

SEC. 103. (a) The Secretary is authorized to make grants to any State or local government for construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects including but not limited to those public works projects of State and local governments for which Federal financial assistance is authorized under provisions of law other than this Act. In addition the Secretary is authorized to make grants to any State or local government for the completion of plans, specifications, and estimates for local public works projects where either architectural design or preliminary engineering or related planning has already been undertaken and where additional architectural and engineering work or related planning is required to permit construction of the project under this Act.

Federal share, 42 USC 6703.

(b) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project.

SEC. 104. In addition to the grants otherwise authorized by this Act, the Secretary is authorized to make a grant for the purpose of increasing the Federal contribution to a public works project for which Federal financial assistance is authorized under provisions of law other than this Act. Any grant made for a public works project under this section shall be in such amount as may be necessary to make the Federal share of the cost of such project 100 per centum. No grant shall be made for a project under this section unless the Federal financial assistance for such project authorized under provisions of law other than this Act is immediately available for such project and construction of such project has not yet been initiated because of lack of funding for the non-Federal share.

SEC. 105. In addition to the grants otherwise authorized by this Act, the Secretary is authorized to make a grant for the purpose of providing all or any portion of the required State or local share of the cost of any public works project for which financial assistance is authorized under any provision of State or local law requiring such contribution. Any grant made for a public works project under this section shall be made in such amount as may be necessary to provide the requested State or local share of the cost of such project. A grant shall be made under this section for either the State or local share of the cost of the project, but not both shares. No grant shall be made for a project under this section unless the share of the financial assistance for such project (other than the share with respect to which a grant is requested under this section) is immediately available for such project and construction of such project has not yet been initiated. 42 USC 6704.

SEC. 106. (a) No grant shall be made under section 103, 104, or 105 of this Act for any project having as its principal purpose the channelization, damming, diversion, or dredging of any natural watercourse, or the construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site) and having as its permanent effect the channelization, damming, diversion, or dredging of such watercourse or construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site). Grants and contracts, requirements. 42 USC 6705.

(b) No part of any grant made under section 103, 104, or 105 of this Act shall be used for the acquisition of any interest in real property.

(c) Nothing in this Act shall be construed to authorize the payment of maintenance costs in connection with any projects constructed (in whole or in part) with Federal financial assistance under this Act.

(d) Grants made by the Secretary under this Act shall be made only for projects for which the applicant gives satisfactory assurances, in such manner and form as may be required by the Secretary and in accordance with such terms and conditions as the Secretary may prescribe, that, if funds are available, on-site labor can begin within ninety days of project approval.

(e) (1) No part of the construction (including demolition and other site preparation activities), renovation, repair, or other improvement of any public works project for which a grant is made under this Act after the date of enactment of this subsection shall be performed directly by any department, agency, or instrumentality of any State or local government. Construction of each such project shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications. Competitive bidding.

(2) No grant shall be made under this Act for any local public works project unless the State or local government applying for such grant submits with its application a certification acceptable to the Secretary that no contract will be awarded in connection with such project to any bidder who will employ on such project any alien in the United States in violation of the Immigration and Nationality Act or any other law, convention, or treaty of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens. Illegal aliens. 8 USC 1101 note.

(f) (1) (A) Notwithstanding any other provision of law, no grant shall be made under this Act for any local public works project unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured U.S.-made products.

articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States, will be used in such project.

(B) Subparagraph (A) of this paragraph shall not apply in any case where the Secretary determines it to be inconsistent with the public interest, or the cost to be unreasonable, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Grant allocation requirements.

(2) Except to the extent that the Secretary determines otherwise, no grant shall be made under this Act for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises. For purposes of this paragraph, the term 'minority business enterprise' means a business at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members. For the purposes of the preceding sentence, minority group members are citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts.

"Minority business enterprise."

Minority group members.

Accessibility standards for handicapped and elderly.

(g) No grant shall be made under this Act for any project for which the applicant does not give assurances satisfactory to the Secretary that the project will be designed and constructed in accordance with the standards for accessibility for public buildings and facilities to the handicapped and elderly under the Act entitled 'An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped', approved August 12, 1968 (42 U.S.C. 4151 et seq.). The Architectural and Transportation Barriers Compliance Board established by the Rehabilitation Act of 1973 (P.L. 93-112) is authorized to insure that any construction and renovation done pursuant to any grant made under this Act complies with the accessibility standards for public buildings and facilities issued under the Act of August 12, 1968.

29 USC 701 note.

Rules and regulations. 42 USC 6706.

Sec. 107. The Secretary shall, not later than thirty days after date of enactment of this Act, prescribe those rules, regulations, and procedures (including application forms) necessary to carry out this Act. Such rules, regulations, and procedures shall assure that adequate consideration is given to the relative needs of various sections of the country. The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project area, and (3) the extent to which proposed projects will contribute to the reduction of unemployment. *The Secretary, in consultation with the Secretary of Labor, and consistent with existing applicable collective bargaining agreements and practices, shall promulgate regulations to assure special consideration to the employment in projects under this Act of qualified disabled veterans (as defined in section 2011(1) of title 38, United States Code) and qualified Vietnam-era veterans (as defined in section 2011(2)(A) of such title 38).*

Employment of disabled veterans, regulations.

The Secretary shall make a final determination with respect to each application for a grant submitted to him under this Act not later than the sixtieth day after the date he receives such application. Failure to make such final determination within such period shall be deemed to be an approval by the Secretary of the grant requested. For purposes of this section, in considering the extent of unemployment or underemployment, the Secretary shall consider the amount of unemployment or underemployment in the construction and construction-related industries.

SEC. 108. (a) The Secretary shall allocate funds appropriated after the date of enactment of the Public Works Employment Act of 1977 under section 111 of this Act as follows:

Funds, allocation. 42 USC 6707.

(1) 2½ per centum of such funds shall be set aside and shall be expended only for grants for public works projects under this Act to Indian tribes and Alaska Native villages. None of the remainder of such funds shall be expended for such grants to such tribes and villages.

NOTE 2

(2) After the set aside required by paragraph (1) of this subsection, $70,000,000 shall be set aside and expended only for grants for any public works project the application for a grant for which was made under this Act after the date of enactment of this Act and before December 24, 1976, and which application was not received, was not considered, or was rejected solely because of an error by an officer or employee of the United States. Any allocation made to an applicant pursuant to regulation shall be reduced by the amount of any grant made to such applicant under this paragraph.

(3) After the set asides required by paragraphs (1) and (2) of this subsection, 65 per centum of such funds shall be allocated among the States on the basis of the ratio that the number of unemployed persons in each State bears to the total number of unemployed persons in all the States and 35 per centum of such funds shall be allocated among those States with an average unemployment rate for the preceding twelve-month period in excess of 6.5 per centum on the basis of the relative severity of unemployment in each such State, except that (A) no State shall be allocated less than three-quarters of one per centum or more than 12½ per centum of such funds for local public works projects within such State, except that in the case of Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, not less than one-half of one per centum in the aggregate shall be granted for such projects in all four of these jurisdictions, and (B) no State whose unemployment data was converted for the first time in 1976 to the benchmark data of the current population survey annual average compiled by the Bureau of Labor Statistics shall receive a percentage of such funds less than the percentage of funds allocated to such State under this Act from funds appropriated to carry out this Act prior to the date of enactment of the Public Works Employment Act of 1977.

(b) (1) **In making grants under this Act, the Secretary shall give priority and preference to public works projects of local governments.**

(2) In making grants for projects for construction, renovation, repair, or other improvement of buildings, the Secretary shall also give consideration as between such building projects to those projects which will result in conserving energy, including, but not limited to, projects to redesign and retrofit public facilities for energy conservation purposes, and projects using alternative energy systems.

(3) In making grants under this Act, the Secretary shall also give priority and preference to any public works project requested by a State or by a special purpose unit of local government which is endorsed by a general purpose local government within such State.

(4) A project requested by a school district shall be accorded the full priority and preference to public works projects of local governments provided in section 108(b) of this Act.

NOTE 3

(c) In making grants under this Act, if for the 12 most recent consecutive months, the national unemployment rate is equal to or exceeds 6½ per centum, the Secretary shall (1) expedite and give priority to applications submitted by States or local governments having unemployment rates for the 12 most recent consecutive months in excess of the national unemployment rate and (2) shall give priority thereafter to applications submitted by States or local gov-

ernments having unemployment rates for the 12 most recent consecutive months in excess of 6½ per centum, but less than the national unemployment rate. Information regarding unemployment rates may be furnished either by the Federal Government, or by States or local governments, provided the Secretary determines that the unemployment rates furnished by States or local governments are accurate, and shall provide assistance to States or local governments in the calculation of such rates to insure validity and standardization.

The Secretary may waive the application of the first sentence of this subsection to any State which receives a minimum allocation pursuant to paragraph (3) of subsection (a) of this section. Waiver.

(d) Whenever a State or local government submits applications for grants under this Act for two or more projects, such State or local government shall submit as part of such applications its priority for each such project.".

(e) The unemployment rate of a local government shall, for the purposes of this Act, and upon request of the applicant, be based upon the unemployment rate of any community or neighborhood (defined without regard to political or other subdivisions or boundaries) within the jurisdiction of such local government, except that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project *to be constructed in such community or neighborhood.*

(f) *Repealed.* Repeal.

(g) States and local governments making application under this Act should (1) relate their specific requests to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions; and (2) where feasible, make requests which, although capable of early initiation, will promote or advance longer range plans and programs.

(h)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall not consider or approve or make a grant for any project for which any application was not submitted for a grant under this Act on or before December 23, 1976.

(2) The Secretary may receive applications for grants for projects under this Act—

(A) from the Trust Territory of the Pacific Islands;

(B) from Indian tribes and Alaska Native villages;

(C) from any applicant to use any allocation which may be made pursuant to regulation, to the extent necessary to expend such allocation, if a sufficient number of applications were not submitted on or before December 23, 1976, to use such allocation.

(i) The Secretary may allow any applicant which has received a grant for a project under this Act to substitute one or more projects for such project if in the judgment of the Secretary (1) the Federal cost in the aggregate of such substituted project or projects does not exceed such grant, (2) such substituted project or projects comply with section 106(d) of this Act, and (3) such substituted project or projects will in fact aid in alleviating drought or other emergency or disaster-related conditions or damage. Section 106(a) of this Act shall not apply to projects substituted under this subsection.

(j) Notwithstanding subsection (h)(1) of this section, grants may be made from appropriations made under section 111 of this Act after September 30, 1977, to States or local governments for projects for the construction, renovation, repair, or other improvements of health care or rehabilitation facilities owned and operated by private nonprofit entities.

SEC. 109. All laborers and mechanics employed on projects assisted by the Secretary under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5). The Secretary shall not extend any financial assistance under this Act for such project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z–15), and section 2 of the Act of June 13, 1964, as amended (40 U.S.C. 276c). 42 USC 6708. 5 USC app. I.

SEC. 110. No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any project receiving Federal grant assistance under this Act, including any supplemental grant made under this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee. Nondiscrimination. 42 USC 6709. 42 USC 2000d.

SEC. 111. There is authorized to be appropriated not to exceed *$6,000,000,000 for the period ending December 31, 1978*, to carry out this Act. Appropriation authorization. 42 USC 6710.

LEGISLATIVE HISTORY:

Pub. Law 94-369

HOUSE REPORTS: No. 94–1077 accompanying H. R. 12972 (Comm. on Public Works and Transportation) and No. 94–1260 (Comm. of Conference).
SENATE REPORTS: No. 94–710 (Comm. on Public Works) and No. 94–939 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 122 (1976):
Apr. 12, 13, considered and passed Senate.
May 13, considered and passed House, amended, in lieu of H. R. 12972.
June 16, Senate agreed to conference report.
June 23, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12, No. 28:
July 6, vetoed; Presidential message.
CONGRESSIONAL RECORD, Vol. 122 (1976):
July 21, Senate overrode veto.
July 22, House overrode veto.

PUBLIC LAW 95–28

HOUSE REPORTS: No. 95–20 (Comm. on Public Works and Transportation) and No. 95–230 (Comm. of Conference).
SENATE REPORTS: No. 95–38 accompanying S. 427 (Comm. on Environment and Public Works) and No. 95–110 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 123 (1977):
Feb. 24, considered and passed House.
Mar. 10, considered and passed Senate, amended, in lieu of S. 427.
Apr. 5, House concurred in Senate amendment with an amendment.
Apr. 28, 29, Senate agreed to conference report.
May 3, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 20:
May 13, Presidential statement.

NOTES DERIVED FROM

CONFERENCE REPORT

HOUSE OF REPRESENTATIVES { REPORT No. 95-230

NOTE 1: PROGRAM POLICIES

Regulations implementing the revisions in the act made by this conference substitute are to be prescribed within 30 days of the date of enactment of these revisions. The conferees expect the next phase of the public works jobs program to be implemented in accordance with the following assumptions and policy directions. A project area will be a city; a county; the balance of a county in which such city is located; or a pocket of poverty under section 108(e) where the project is within an urbanized area. Unemployment statistics (as to total number of unemployed and rate) are to be determined for project areas. not for applications. It is intended that all communities, regardless of size, that otherwise qualify, are to be treated as applicants.

The conferees are aware of the problems which exist in obtaining timely, accurate, and uniform measurements of unemployment for all areas of the country. However, the conferees are also aware that the Bureau of Labor Statistics (BLS) cannot, at this time, provide unemployment data for all jurisdictions in the country. Unemployment statistics gathered by the Department of Labor through the BLS generally cover jurisdictions above 50,000 population and prime sponsor areas designated under the Comprehensive Employment and Training Act (CETA). unless special studies of a labor force have been undertaken at the request of a local jurisdiction or the State Employment Security Agency. Prior to August 1976, the BLS was unable to provide comparable unemployment statistics on a county-by-county basis. The BLS has assured that unemployment data is now available to the Economic Development Administration on a county-by-county basis.

Although the conferees recognize the need to have comparable unemployment data from one source to assure uniform and accurate measurements of a community's distress, it is also important that a community not be denied assistance under the act because national unemployment figures are unavailable for a local jurisdiction. In such cases as unemployment data is not available from the Bureau of Labor Statistics, the Secretary shall accept State or local data.

The BLS is currently engaged in establishing benchmarks for all States based on the current population survey method now used in calculating unemployment statistics nationwide. The conferees urge the States to develop data on jurisdictions smaller than 50,000 as soon as possible so that eligible areas under both the Local Public Works Act and the Public Works and Economic Development Act can be qualified for assistance in a timely manner. To provide the optimum opportunity for participation in this program the Congress specifically provided in section 108(c) that information regarding unemployment rates may be furnished by the Federal Government, or by States or by local governments provided that the Secretary of Commerce determines that such unemployment rates are accurate. The Secretary is also required to provide assistance to the States or local government in the calculation of such rates to insure their validity and standardization. Where a State has already developed unemployment data for jurisdictions between 25,000 and 50,000 population this data shall be utilized by the EDA in qualifying local jurisdictions under the act.

Under the Office of Management and Budget's Circular A–46, Federal agencies are required to use the unemployment data provided by the Department of Labor, Bureau of Labor Statistics. It is the conferees' intent under section 108(c) that if the Economic Development Administration cannot obtain unemployment data from the BLS for a jurisdiction smaller than 50,000 population, or for other jurisdictions where the data is not available for the most recent 12 consecutive months, that the EDA shall request such unemployment information from the State employment security agencies. It is not the conferee's intent to delay the updating of unemployment statistics for project applications on file at EDA in allowing the agency to obtain data from the States but the conferees want to insure that EDA has the maximum flexibility in obtaining unemployment data in a timely manner for all eligible applicants under the Act.

Only project areas in excess of 6.5 percent unemployment may receive grants, except (1) where the State unemployment rate is less than 6.5 percent, in which case only project areas in excess of the State average unemployment rate may receive grants, and (2) in minimum allocation States where the Secretary waives the priorities of section 108(c). A share of the State's allocation of funds shall be established for each such project area, based on numbers and rate of unemployment in such area, to serve as a benchmark or planning target.

The Secretary of Commerce shall assure equity, and a substantial portion of project awards, for each category of general purpose local government applicants and projects endorsed by such applicants, within each project area. An applicant may select projects for funding with its planning target only in the project area on which that planning target is based. A school district shall be treated on the same basis as a general purpose local government, for all purposes. New applications shall be received only where there are insufficient pending applications to use a States' allocation or a project area's planning target. In such cases applications may be received from any eligible recipient within the project area. Each applicant shall indicate its order of preference among its project applications.

The conferees recognize the responsibilities of county governments. Accordingly, the intent of the conferees is for applicant counties to receive an equitable share of funds in any area which reflects their level of responsibility and unemployment.

In cases of projects of different applicants within a county or balance-of-county project area which are otherwise equal in priority, consideration shall be given to the relative unemployment statistics of the applicants, if recent comparable data is available, and, if necessary, to various criteria for differentiating the projects themselves, such as the job-creating potential and time necessary for completion of the project, the energy conservation potential of a building project under section 108(b)(2), the project's value in alleviating drought or other critical local needs, or the long-term economic benefits of the completed project.

Two cases where project funding was erroneously charged against a local benchmark have been called to the conferees' attention. In one case, State projects located in Long Island were charged against the planning target for Albany, the State capital. In another case, the funding of projects was charged against the benchmark for Schenectady even though the projects were located outside the city.

The conferees intend this type of error will be corrected in the next round of funding without penalizing local governments like these. In such cases the cities will receive a full planning target or allocation based on the $6 billion authorized program and projects funded in the first round will be charged against allocation of the area where the project was located.

ENVIRONMENTAL IMPACT

The Conferees wish to clarify that, in every case, the National Environmental Policy Act shall be implemented, to the fullest extent possible consistent with the time constraints imposed by the Local Public Works Development and Investment Act of 1976. The Secretary shall review each grant application, its potential environmental impacts, and the applicant's assurances regarding environmental effects in order to determine whether such assurances are adequate. This review must be accomplished without undue burden on the applicant to submit additional information, and without any delay in project consideration. The statutory limit on the period in which project selection decisions are to be made must be observed.

If the Secretary determines that a proposed project is likely to have significant direct or indirect adverse effects that would normally require full review in an environmental impact statement, that project will ordinarily not be funded under the Local Public Works Development and Investment Act of 1976. If, however, the Secretary's review determines that the effect of a proposed project has been adequately evaluated in accordance with section 102(2)(C) of the National Environmental Policy Act the Secretary may fund the proposed project.

NOTE 2: ERRORS

Provides a $70 million set aside for grants to be made by the Secretary for projects that were not received, not considered, or were rejected solely because of error made by an officer or employee of the United States. Projects eligible for grants under this section must meet all of the requirements of the Act as in effect at the time of the error. In addition, any applicant receiving an allocation of funds for public works projects under the Act is to have that allocation reduced by the amount of any grant made to it from the $70 million set aside for these grants.

NOTE 3: UNEMPLOYMENT PERIOD

In order to avoid an undue concentration of funds and to ensure a wider distribution of projects throughout a State, if the Secretary waives the priorities in section 108(c) the Secretary shall, in States receiving a minimum allocation of funds, select projects without regard to the priority provision in section 108(c).

States receiving the minimum allocation (of which there are 29) may contain several areas having unemployment rates in excess of those entitled to priority. As a general rule the greater part of the State contains communities in need of projects although their unemployment rate is below 6½ per centum. The Secretary, in an effort to achieve the widest distribution of funds, may award projects to areas having unemployment rates below 6½ per centum. This is not to say that a number of projects will not be located in areas of the State with the highest unemployment rate. This provision will actually aid the Secretary in locating projects in areas of highest unemployment within a State, especially those States with lower unemployment. However, a strict adherence to selecting projects in areas having an unemployment rate in excess of 6½ per centum might result in an undue concentration of funds in one or two communities. It is intended that the Secretary shall consider factors other than the rate of unemployment when necessary to ensure a wider distribution of funds in minimum States.

NOTE: *This unofficial reprint was edited and is published by the Office of Chief Counsel, Economic Development Administration, U.S. Department of Commerce.*

Appendix D consists of three parts:

Part I. An extract from the Code of Federal Regulations (January 1977), Title 13, Part 310 entitled "Relocation Assistance and Land Acquisition Policies."

Part II. Title 13, Part 316 of the Code of Federal Regulations which contain EDA's regulations applicable to LPW I (December 1977);

Part III. Title 13, Part 317 of the Code of Federal Regulations which contain EDA's regulations applicable to LPW II (December 1977).

AUTHORITY: Sec. 213 (b) and (c), Public Law 91-646, 84 Stat. 1901; 42 U.S.C. 4633.

SOURCE: 38 FR 2292, Jan. 23, 1973, unless otherwise noted.

Subpart A—Introduction

§ 310.1 Purpose.

The purpose of the regulations in this part and procedures is to provide for the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to undertakings by State agencies with financial assistance by EDA.

§ 310.2 Definitions.

(a) "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(b) "Act", as used in this part, means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(c) "Person" means any individual, partnership, corporation, or association.

(d) "Displaced person" means any person who, on or after the effective date of the Act moves from real property or moves his personal property from real property as a result of the acquisition of such real property in whole or in part, or as a result of the written order of the acquiring State agency to vacate real property for a program or project undertaken with EDA financial assistance; and solely for the purposes of sections 202(a) and (b), and 205 of the Act, as a result of the acquisition of or as a result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation for such program or project.

(e) "Regional Directors" means those officials of EDA appointed by the Assistant Secretary for Economic Development pursuant to the authority delegated to him by the Secretary of Commerce as provided by the Public Works and Economic Development Act of 1965, as amended, Public Law 89-136, to further the aims and objectives of said Act.

(f) "Business" means any lawful activity, excepting a farm operation, conducted primarily—

(1) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization; or

(4) Solely for the purpose of implementing section 202(a) of the Act, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(g) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Subpart B—Assurance of Adequate Replacement Housing Prior to Displacement

§ 310.10 Scope of subpart.

The provisions set forth in this subpart are to guide State agencies and Regional Directors in implementing sections 205(c)(3) and 206(b) of the Act.

§ 310.11 Determination.

(a) *Availability.* No State agency shall proceed with the phase of any project which phase will cause the displacement of any person until it has provided satisfactory assurance to the EDA Regional Director that within a reasonable period of time prior to displacement, there will be available on a basis consistent with the requirements of title VIII of the Civil Rights Act of 1968 (Public Law 90-284), in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financal means of the families and individuals displaced, decent, safe, and sanitary dwellings, as described in paragraph (d) of this section, equal in number to the number of, and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment.

(b) *Support.* This determination or assurance should be based on a current survey and analysis of available replacement housing by the displacing State agency. Such survey and analysis must take into account the competing demands on available housing.

(c) *Waiver.* The Regional Director may in unusual situations waive the determination required by paragraph (a) of this section. These should be limited only to emergency or other extraordinary situations where immediate possession of real property is of crucial importance. Each waiver of assurance of replacement housing shall be supported by appropriate findings and a determination of the necessity for the waiver. Determination so made shall be included in the annual report required by section 214 of the Act.

(d) *Decent, safe, and sanitary housing.* A decent, safe, and sanitary dwelling is one which is found to be in sound, clean and weathertight condition, and which meets local housing codes. The displacing State agency and the Regional Director shall consider the following criteria in determining if a dwelling unit is decent, safe, and sanitary. Adjustments may only be made in the cases of unusual circumstances or in unique geographic areas.

(1) *Housekeeping unit.* A housekeeping unit must include a kitchen with fully usable sink; a cooking stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bathroom and the kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(2) *Nonhousekeeping unit.* A nonhousekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living. If local codes do not include requirements relating to space and sanitary facilities, standards will be subject to the approval of the head of the State agency causing the displacement, with the concurrence of the Regional Director.

(3) *Occupancy standards.* Occupancy standards for replacement housing shall comply with State agency approved occupancy requirements, with the concurrence of the Regional Director, or comply with local codes.

(e) *Absence or inadequacy of local standards.* In those instances where there is no local housing code or a local housing code does not contain certain minimum standards or the standards are inadequate, the head of the State agency, with the concurrence of the Regional Director, may establish the standards.

Subpart C—Moving and Related Expenses

§ 310.20 Scope of subpart.

The provisions set forth in this subpart are to guide State agencies and Regional Directors in implementing section 202(a) of the Act.

§ 310.21 Actual reasonable expenses in moving.

(a) *To be allowed.* (1) Transportation of individuals, families, and personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, except where the displacing agency determines that relocation beyond this 50-mile area is justified.

(2) Packing and unpacking, crating and uncrating of personal property.

(3) Advertising for packing, crating, and transportation when the displacing agency determines that it is necessary.

(4) Storage of personal property for a period generally not to exceed 12 months when the displacing agency determines that it is necessary.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal, reinstallation, reestablishment, including such modification as deemed necessary by the displacing agency of, and reconnection of utilities for, machinery, equipment, appliances, and other items, not acquired as real property. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personalty and that the displacing State agency is released from any payment for the property.

(7) Property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agent, or employees), in the process of moving, where insurance to cover such loss or damage is not available.

(8) Such other reasonable expenses determined to be eligible under regulations issued by the head of the State agency with the concurrence of the Regional Director.

(b) *Limitations.* (1) When the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of moving commercially, unless the head of the displacing State agency, with the concurrence of the regional director, determines a greater amount is justified.

(2) When an item of personal property which is used in connection with any business or farm operation is not moved, but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the estimated costs of moving, whichever is less.

(3) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the judgment of the head of the State agency responsible for the program or project causing the displacement and with the concurrence of the regional director, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving junkyards, stockpiled sand, gravel, minerals, metals, and similar type items of personal property.

(4) If the cost of moving or relocating an outdoor advertising display or displays is determined to be equal to or in excess of the in-place value of the display, consideration should be given to acquiring such display or displays as a part of the real property, unless such acquisition is prohibited by State law.

§ 310.22 Nonallowable moving expenses and losses.

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures or other improvements in which the displaced person reserved ownership, except as otherwise provided by law.

(c) Improvements to the replacement site, except when required by law.

(d) Interest on loans to cover moving expenses.

(e) Loss of goodwill.

(f) Loss of profits.

(g) Loss of trained employees.

(h) Personal injury.

(i) Cost of preparing the application for moving and related expenses.

(j) Payment for search cost in connection with locating a replacement dwelling.

(k) Such other items as the head of the State agency with the concurrence of the regional director determines should be excluded.

§ 310.23 Expenses in searching for replacement business or farm.

(a) *To be allowed.* (1) Actual travel costs.

(2) Extra costs for meals and lodging.

(3) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(4) In the discretion of the head of the displacing State agency with the concurrence of the regional director, necessary broker, real estate or other professional fees to locate a replacement business or farm operation under circumstances prescribed in Federal agency regulations.

(b) *Limitation.* The total amount a displaced person may be paid for searching expenses may not exceed $500 unless the head of the displacing State agency with the concurrence of the regional director determines that a greater amount is justified based on the circumstances involved.

§ 310.24 Actual direct losses by business or farm operations.

When the displaced person does not move personal property, he should be required to make a bona fide effort to sell it, and should be reimbursed for the reasonable costs incurred.

(a) When the business or farm operation is discontinued, the displaced person is entitled to the difference between the fair market value of the personal property for continued use at its location prior to displacement and the sale proceeds, or the estimated costs of moving 50 miles, whichever is less.

(b) When the personal property is abandoned, the displaced person is entitled to payment for the fair market value of the property for continued use at its location prior to displacement or the estimated costs of moving 50 miles, whichever is less.

(c) The cost of removal of the personal property shall not be considered as an offsetting charge against other payments to the displaced person.

Subpart D—Payments in Lieu of Moving and Related Expenses

§ 310.30 Scope of subpart.

The provisions set forth in this subpart are to guide State agencies and regional directors in implementing section 202 (b) and (c) of the Act.

§ 310.31 Dwellings—schedules.

(a) Subsection 202(b) provides that at the option of the displaced person he may receive a moving expense allowance not to exceed $300, based on schedules established by each agency head, and a dislocation allowance of $200. State agencies with the concurrence of the regional director may pay a moving expense allowance based on moving allowance schedules maintained by the respective State highway departments. These schedules should provide for adequacy of reimbursement in every locality. The Federal Highway Administration will approve all such schedules on a current basis, and will make them available to displacing agencies upon request.

(b) Where there are no highway department schedules, the heads of the Federal agencies undertaking or providing Federal financial assistance to a project causing displacement in such areas shall cooperate in the development of a single moving expense schedule for the use of all displacing agencies.

(c) A displaced person who elects to receive a payment based on a schedule shall be paid under the schedule used in the jurisdiction in which displacement occurs regardless of where he relocates.

§ 310.32 Businesses.

(a) Eligibility: A person displaced from his business, as defined in subsection 101(7) (A), (B), and (C) of the Act, is eligible under subsection 202(c) of the Act to receive a fixed payment in lieu of moving and related expenses. Care must be exercised, in each instance, however, to assure that such payments are made only in connection with a bona fide business. The head of the State agency responsible for the program or project causing displacement shall, by regulation, with the concurrence of the Regional Director, prescribe appropriate criteria for a determination that a given activity does, in fact, constitute a bona fide business.

(b) Those businesses described in subsection 101(7)(D) of the Act are not eligible under subsection 202(c) for a payment in lieu of moving and related expenses.

(c) Where a displaced person is displaced from his place of business, no payment shall be made under subsection 202(c) of the Act until the head of the displacing State agency, with the concurrence of the Regional Director, determines (1) that the business is not part of a commercial enterprise having at least one other establishment not being acquired, which is engaged in the same or similar business, and (2) that the business cannot be relocated without a substantial loss of existing patronage. The determination of loss of existing patronage shall be made by the displacing State agency only after consideration of all pertinent circumstances, including but not limited to, the following factors:

(i) The type of business conducted by the displaced concern.

(ii) The nature of the clientele of the displaced concern.

(iii) The relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement location for the displaced person.

§ 310.33 Farms—partial taking.

Where a displaced person is displaced from only a part of his farm operation, the fixed payment provided by subsection 202(c) of the Act shall be made only if the displacing State agency determines, with the concurrence of the Regional Director, that the farm met the definition of a farm operation prior to the acquisition and that the property remaining after the acquisition can no longer meet the definition of a farm operation.

§ 310.34 Nonprofit organizations.

Where a nonprofit organization is displaced, no payment shall be made under subsection 202(c) of the Act until the head of the displacing State agency determines, with the concurrence of the Regional Director:

(a) That the nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations includes the persons, community, or clientele served or affected by the activities of the nonprofit organization.

(b) That the nonprofit organization is not part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

§ 310.35 Net earnings.

The term "average annual net earnings" as used in subsection 202(c) of the Act means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or firm operation moves from the real property acquired for a project, or during such other period as the head of the displacing State agency with the concurrence of the Regional Director, determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. If a business or farm operation has no net earnings, or has suffered losses during the period used to compute "average annual net earnings," it may nevertheless receive the $2,500 minimum payment authorized by subsection 202(c).

§ 310.36 Amount of business fixed payment.

The fixed payment to a person displaced from a farm operation or from his place of business, including nonprofit organizations, shall be in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than $2,500 nor more than $10,000.

Subpart E—Replacement Housing Payments for Homeowners

§ 310.40 Scope of subpart.

The provisions set forth in this subpart are to guide State agencies and Regional Directors in implementing section 203(a) of the Act.

§ 310.41 Eligibility.

(a) A displaced owner-occupant is eligible for a replacement housing payment, authorized by section 203(a) of the Act, not to exceed $15,000, if he meets both of the following requirements:

(1) Actually owned and occupied the acquired dwelling from which displaced for not less than 180 days prior to the initiation of negotiations for the property, or owned and occupied the property covered or qualified under section 217 of the Act for not less than 180 days prior to displacement. The term "initiation of negotiations" means the day on which the acquiring State agency makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property.

(2) Purchases and occupies a replacement dwelling, which is decent, safe, and sanitary, not later than the end of the 1-year period beginning on the date on which he receives from the displacing State agency the final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) A displaced owner-occupant of a dwelling who is determined to be ineligible under this paragraph may be eligible for a replacement housing payment under Subpart F of this part.

§ 310.42 Comparable replacement dwelling.

For the purposes of rendering relocation assistance by making referrals for replacement housing and for computation of the replacement housing payment, a comparable replacement dwelling is one which is decent, safe, and sanitary and:

(a) Functionally equivalent and substantially the same as the acquired dwelling, but not excluding newly constructed housing.

(b) Adequate in size to meet the needs of the displaced family or individual. However, at the option of the displaced person, a replacement dwelling may exceed his needs when the replacement dwelling has the same number of rooms or the equivalent square footage as the dwelling from which he was displaced.

(c) Open to all persons regardless of race, color, religion, or national origin, consistent with the requirements of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968.

(d) Located in an area not generally less desirable than the one in which the acquired dwelling is located, with respect to:

(1) Neighborhood conditions, including but not limited to municipal services and other environmental factors,

(2) Public utilities, and

(3) Public and commercial facilities.

(e) Reasonably accessible to the displaced person's place of employment or potential place of employment.

(f) Within the financial means of the displaced family or individual.

(g) Available on the market to the displaced person.

(h) If housing meeting the requirements of this paragraph is not available on the market, the head of a displacing State agency may, upon a proper finding of the need therefor, and with the concurrence of the Regional Director, consider available housing exceeding these basic criteria.

§ 310.43 Computation of replacement housing payment.

The replacement housing payment of not more than $15,000 comprises the following:

(a) *Differential payment for replacement housing.* The head of the displacing State agency with the concurrence of the Regional Director may determine the amount which, if any, when added to the acquisition cost of the dwelling acquired by the displacing agency, is necessary to purchase a comparable replacement dwelling by either establishing a schedule or by using a comparative method.

(1) *Schedule method.* The State agency may establish, with the concurrence of the Regional Director, a schedule of reasonable acquisition costs for comparable replacement dwellings of the various types of dwellings to be acquired and available on the private market. The schedule shall be based on a current market analysis sufficient to support determinations of the amount for each type of dwelling to be acquired. When more than one State agency is causing displacement in a community or an area, the respective heads of the State agencies concerned shall coordinate the establishment of the schedule for replacement housing payments.

(2) *Comparative method.* The State agency may determine the price of a comparable replacement dwelling by selecting a dwelling or dwellings most representative of the dwelling unit acquired, available to the displaced person,

and which meets the definition of a comparable replacement dwelling. A single dwelling shall be used only when additional comparable dwellings are not available.

(3) *Alternative to paragraphs (a)(1) and (2) of this section.* When neither above-described method is feasible, the head of the State agency with the concurrence of the Regional Director may develop criteria for computing the payment.

(4) *Limitations.* The amount established as the differential payment for the replacement housing sets the upper limit of this payment.

(i) If the displaced person voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the above, the comparable replacement housing payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(ii) If the displaced persons voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment shall be made.

(b) *Interest payment.* The head of the State agency, with the concurrence of the Regional Director, shall determine the amount, if any, necessary to compensate a displaced person for any increased interest costs, including points paid by the purchaser. Such amount shall be paid only if the acquired dwelling was encumbered by a bona fide mortgage, i.e., one which was a valid lien on the acquired dwelling for not less than 180 days prior to the initiation of negotiations. The following shall be considered in computing the interest payment:

(1) The payment shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the bona fide mortgage on the acquired dwelling, at the time of acquisition, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value.

(2) The discount rate shall be the prevailing interest rate paid on savings deposits by the commercial banks in the general area in which the replacement dwelling is located.

(3) However, the interest payment shall be based on the present value of the reasonable cost of the interest differential, including points paid by the purchaser, on the amount financed, not to exceed the amount of the unpaid debt on the acquired dwelling for its remaining term.

(c) *Incidental expenses.* (1) The head of the State agency with the concurrence of the Regional Director shall determine the amount, if any, necessary to reimburse a displaced person for actual costs incurred by him incident to the purchase of the replacement dwelling (but not including prepaid expenses) such as:

(i) Legal, closing, and related costs including title search, preparation of conveyance instruments, notary fees, surveys, preparation of plats, and charges incident to recordation.

(ii) Lenders', FHA, or VA appraisal fees.

(iii) FHA application fee.

(iv) Certification of structural soundness when required by lender, FHA, or VA.

(v) Credit report.

(vi) Title policies or abstracts of titles.

(vii) Escrow agent's fee.

(viii) State revenue stamps or sale or transfer taxes.

(2) No fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title 1, Public Law 90–321, and Regulation "Z" (12 CFR Part 226) issued pursuant thereto by the Board of Governors of the Federal Reserve System.

Subpart F—Replacement Housing Payments for Tenants and Certain Others

§ 310.50 Scope of subpart.

The provisions set forth in this subpart are to guide State agencies and Regional Directors in implementing section 204 of the Act.

§ 310.51 Eligibility.

(a) A displaced tenant or owner-occupant of a dwelling for less than 180 days is eligible for a replacement housing payment not to exceed $4,000, as authorized by section 204, if he meets both of the following requirements:

(1) Actually occupied the dwelling for not less than 90 days prior to the initiation of negotiations for acquisition of the property or actually occupied the property covered or qualified under section 217 of the Act for not less than 90 days prior to displacement. The term "initiation of negotiations" means the day on which the acquiring agency makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property. Tenants and other persons occupying the property shall be advised when negotiations for the property are initiated with the owner thereof.

(2) Is not eligible to receive a payment under section 203 of the Act.

(b) An owner-occupant of a dwelling for not less than 180 days prior to the initiation of negotiations is eligible for a replacement housing payment as a tenant, as authorized by section 204, when he rents a decent, safe, and sanitary replacement dwelling instead of purchasing and occupying a replacement dwelling, which is decent, safe, and sanitary not later than the end of the 1-year period beginning on the date on which he receives from the displacing agency final payment for all costs for the acquired dwelling, or on the date on which he moves from the acquired dwelling whichever is the later date.

§ 310.52 Computation of replacement housing payment for displaced tenants.

A displaced tenant is eligible for a rental replacement housing payment; or, if he purchases replacement housing within 1 year from displacement, he is eligible for a downpayment including expenses incidental to closing not to exceed $4,000.

(a) *Rental replacement housing payment.* The head of the State agency with the concurrence of the regional director may determine the amount necessary to rent a comparable replacement dwelling by either establishing a schedule or by using a comparative method.

(1) *Schedule method.* A rental schedule may be established for renting comparable replacement dwellings as described in § 310.42 and which are available on the private market for the various types of dwellings to be acquired. The payment shall be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations if such rent was reasonable. The State agency with the concurrence of the regional director may prescribe circumstances which may dictate the use of economic rather than actual rent paid by the displaced tenant. For purposes of the regulations in this part, "economic rent" is defined as the amount of rent the displaced tenant would have had to pay for a comparable dwelling unit in an area similar to the neighborhood in which the dwelling unit to be acquired is located. The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling required. When more than one State agency is causing the displacement in a community or an area, the respective heads of the agencies shall cooperate in choosing the method for computing the replacement housing payment and shall use uniform schedules of average rental housing in the community or area.

(2) *Comparative method.* The average month's rent may be determined by selecting one or more dwellings most representative of the dwelling unit acquired, which is available to the displaced person and meets the definition of a comparable replacement dwelling as described in § 310.42. The payment should be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations, if such rent was reasonable. The State agency with the concurrence of the Regional Director may prescribe circumstances which may dictate the use of economic rather than actual rent paid by the displaced tenant.

(3) *Exceptions.* The head of the State agency with the concurrence of the Regional Director may establish the average months' rent paid by the displaced person by using more than 3 months, if he deems it advisable. If rent is being paid to the displacing agency, economic rent shall be used in determining the amount of the payment to which the displaced tenant is entitled.

(4) *Alternate to paragraphs (a)(1) and (2) of this section.* When neither method is feasible, the head of the State agency with the concurrence of the Regional Director shall develop criteria for computing the payment.

(5) *Disbursement of rental replacement housing payments.* All rental replacement housing payments in excess of $500 will be made in four equal annual installments.

(b) *Purchases—replacement housing payment.* If the tenant elects to purchase instead of renting, the payment shall be computed by determining the amount necessary to enable him to make a downpayment and to cover incidental expenses in the purchase of replacement housing, as follows:

(1) The downpayment shall be the amount necessary to make a downpayment on a comparable replacement dwelling. Determination of the amount necessary for such downpayment shall be based on the amount of downpayment that would be required for purchase of the dwelling using a conventional loan.

(2) Incidental expenses of closing the transaction are those as described in § 310.43(c).

(3) The maximum payment may not exceed $4,000, except that if more than $2,000 is required, the tenant must match any amount in excess of $2,000 by an equal amount, in making the downpayment.

(4) The full amount of the replacement housing payment must be applied to the purchase price and incidental costs shown on the closing statement.

§ 310.53 Computation of replacement housing payments for certain others.

(a) A displaced owner-occupant who does not qualify for a replacement housing payment under Subpart E of this part because of the 180-day occupancy requirement and elects to rent is eligible for a rental replacement housing payment not to exceed $4,000. The payment will be computed in the same manner as shown in § 310.52(a) except that the present rental rate for the acquired dwelling shall be economic rent as determined by market data.

(b) A displaced owner-occupant who does not qualify for a replacement housing payment under Subpart E of this part because of the 180-day occupancy requirement and elects to purchase a replacement dwelling is eligible for a replacement housing downpayment and closing costs not to exceed $4,000. The payment will be computed in the same manner as shown in § 310.52(b).

Subpart G—Relocation Assistance Advisory Services

§ 310.60 Relocation assistance advisory program.

The head of the State agency shall provide a relocation assistance advisory program including such measures, facilities, or services as may be necessary or appropriate to perform all of the tasks detailed in section 205(c) of the Act and acceptable to the regional director, for persons displaced as a result of EDA assisted programs or projects. In the implementation of this section, when more than one State agency is causing displacement in a community or area, the heads of the agencies shall take positive action to assure the maximum coordination of relocation activities. To assure simplification and coordination in administering relocation activities, State agencies shall consider contracting with a single agency to assume full responsibility for providing relocation services and assistance in a given community or area. The head of the State agency with the concurrence of the regional director shall issue regulations and procedures requiring officials responsible for programs displacing persons, businesses, and farm operations to contact State and local agencies in the community to determine the availability of housing resources and to assure coordination of all relocation activities in the community.

Subpart H—Federally Assisted Programs

§ 310.70 Assurances.

(a) *Information.* The State agency shall provide EDA with a statement assuring EDA that the affected persons will be adequately informed of the benefits, policies, and procedures described in this part.

(b) *Inability to provide assurances.* The State agency shall provide an assurance to EDA that will comply with the provisions of this part as required by sections 210 and 305 of the Act. In the event a State agency maintains that it is legally unable to provide all or any part of the required assurances, its statement should be supported by an opinion of the chief legal officer of the State agency. The opinion shall contain a full discussion of the issues involved, and shall cite legal authority in support of the conclusion of legal inability to provide any part of the required assurances. Except that after July 1, 1972, the assurances shall be completely applicable to all States.

(c) *Compliance.* The State agency shall provide an assurance that it will comply with the provisions of sections 301 and 302 of the Act, as required by section 305 of the Act. If unable to comply with any of these policies, its statement shall be supported by an opinion of the chief legal officer of the State agency. Such opinion shall contain a full discussion of the issues involved and shall cite legal authority in support of any conclusion of legal inability to comply with any of the provisions set forth in sections 301 and 302 of the Act.

(d) *Monitoring assurances.* The Regional Directors shall take continuing action to insure that State agencies are acting in accordance with the assurances they have provided.

§ 310.71 Administration—relocation assistance programs.

If a State agency elects to contract for services pursuant to section 212 of the Act, it shall enter into a written contract consistent with EDA regulations and subject to the concurrence of the Regional Director.

§ 310.72 Notification procedures.

To the greatest extent practicable, at least 90 days' written notice of displacement must be given by the head of the State agency to each individual, family, business, or farm to be displaced. Such notice shall be served personally or by certified or registered first-class mail.

§ 310.73 Application for benefits.

(a) A displaced person who makes proper application to the State agency for a payment authorized by title II of the Act shall be paid promptly after a move, or, in hardship cases, be paid in advance.

(b) Applications for benefits under the Act must be made to the State agency within 18 months from the date on which the displaced person moves from the real property acquired or to be acquired, or the date on which the State agency makes final payment of all costs of that real property, whichever is the later date. The head of the State agency, with the concurrence of the Regional Director, may extend this period upon a proper showing of good cause.

Subpart I—Uniform Real Property Acquisition Policy

§ 310.80 Scope of subpart.

The provisions set forth in this subpart are to guide State agencies and Regional Directors in implementing title III of the Act.

§ 310.81 Acquisition policies.

Before initiation of negotiations for the acquisition of real property, the head of the State agency, with the concurrence of the Regional Director, shall establish an amount which he believes to be just compensation therefor. In no event shall such amount be less than the State agency's approved appraisal of the fair market value of the property. When negotiations are initiated the owner of such real property shall be provided with a written statement of, and summary of the basis for, the amount estimated as the just compensation. The summary statement of the basis for the agency's determination of just compensation should include, as a minimum, the following:

(a) Identification of the real property and the estate or interest therein to be acquired, including the buildings, structures, and other improvements on the land, as well as the fixtures considered to be a part of the real property, and

(b) The amount of the estimated just compensation for the property to be acquired, as determined by the acquiring agency, and a statement of the basis therefor. In the case of a partial taking, damages, if any, to the remaining real property shall be separately stated.

(c) For the purpose of promoting uniformity under section 301(3) of the Act, the head of each State agency acquiring real property shall, with the concurrence of the Regional Director, establish standards for appraisals used in real property acquisition criteria for determining the qualifications of appraisers, and a system of review by qualified appraisers consistent to the maximum extent possible under State law with the Uniform Appraisal Standards for Federal Land Acquisition published in 1972 (or at such later date as may become relevant if such Uniform Standards are revised) by the Interagency Land Acquisition Conference.

§ 310.82 Payment or reimbursement for necessary expenses.

The State agency shall provide EDA with a statement that, as required by section 305 of the Act, property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of the Act.

PART 316—LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT PROGRAM

Republication

Pursuant to the authority vested in section 107 of Title I of the Public Works Employment Act of 1976 (42 U.S.C. 6701 et seq.), the Economic Development Administration hereby republishes Part 316 of Title 13, Code of Federal Regulations.

The purpose of this republication of Part 316 is to combine the numerous amendments which have been made to the part since it was published on August 23, 1976 (41 FR 35670 as amended at 41 FR 36637, 41 FR 38996, and 41 FR 45128). The republication is editorial in nature and is being done for the readers' convenience.

Part 316 combining the numerous amendments made thereto since August 23, 1976, reads as follows:

Sec.

AUTHORITY: Title I, Pub. L. 94–369 (July 22, 1976); 42 U.S.C. 6701 *et seq.*; 90 Stat. 999; and Department of Commerce Organization Order 10–4 (September 30, 1975), as amended (40 FR 56702, as amended at 40 FR 58878 and at 41 FR 35548).

§ 316.1 Purpose.

The purpose of this part is to set forth the requirements and procedures pursuant to which eligible applicants may receive grants under Title I of the Public Works Employment Act of 1976, which is entitled the "Local Public Works Capital Development and Investment Act of 1976."

§ 316.2 Definitions.

"Assistant Secretary" means the Assistant Secretary of Commerce for Economic Development or his delegate.

"General purpose unit of local government" means any city, county, town, parish, Indian tribe, school district or any other "unit of general local government" as included within the definition of that term by section 104 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq.).

"Indian tribe" means the governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority or other tribal organization or entity or Alaskan native village.

"Initiation of construction" means that notice to proceed or its equivalent has been issued or on-site labor has begun, except where on-site labor has commenced on the project but the project was abandoned due to lack of funds or where the project is to expand or modify a completed facility which has integrity in and of itself.

"Local Public Works Act" means the "Local Public Works Capital Development and Investment Act of 1976," which is Title I of the Public Works Employment Act of 1976.

"Local government" means any city, county, town, parish, or other political subdivision of a State (including local school districts), and any Indian tribe.

"Maintenance costs" means costs that are incurred for any necessary repairs or upkeep of property which neither adds to the permanent value of the property or appreciably prolongs its intended life, but rather keeps it in an efficient operating condition.

"Political subdivision of a State" means the agencies, instrumentalities and authorities established or authorized by State law including, but not limited to, special districts and regional authorities formed by local governments.

"Public works" means public facilities including, but not limited to, municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, and facilities.

"Renovation, repair or other improvements" means only those activities which either substantially or appreciably increase the value or prolong the life of a public facility and excludes those activities which keep the public facility in ordinary efficient operating conditions during its probable useful life.

"State" includes the several States, the health, education and social service District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

§ 316.3 Applicants.

A State or a local government, as defined in § 316.2 of this part, is eligible for assistance under the Local Public Works Act.

§ 316.4 Direct grants.

(a) The Assistant Secretary may make direct grants to any State or local government for construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects, including those for which Federal financial assistance is authorized under provisions of law other than the Local Public Works Act. Such grants may include funds for the completion of plans, specifications and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

(b) Applications under this section will be approved only if the applicant submits with its application, if applicable, and required by EDA, a written certification from the other Federal agency/agencies primarily concerned with projects of the type involved in the application that the project meets all applicable Federal statutory and regulatory requirements to the extent necessary to assure the utilization of the project for the services intended.

(c) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

§ 316.5 Supplemental grants.

(a) The Assistant Secretary may make supplemental grants for the purpose of increasing the Federal contribution to 100 percent of the project cost (exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant) for any Federally assisted public works project authorized by any Federal law other than the Local Public Works Act if the applicant submits with its application:

(1) A written certification from the other Federal agency/agencies that:

(i) Federal financial assistance for the project has been approved and the funds are immediately available for the project;

(ii) The project meets all applicable Federal statutory and relevant related requirements; and

(2) Its written certification that actual construction of the project has not yet been initiated because of lack of funding for the non-Federal share.

(b) The Assistant Secretary also may make grants in an amount necessary to provide all or part of the required State or local share (but not both shares) of the cost of any public works project for which financial assistance is authorized by State or local law requiring such contribution if the applicant submits with its application a written certification from the appropriate authority that:

(1) The share of financial assistance not applied for has been properly approved and is immediately available for the project;

(2) The project meets all applicable statutory and other relevant requirements of law; and

(3) Construction of the project has not yet been initiated.

(c) Grants under this section may include funds for the completion of plans, specifications, and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

§ 316.6 Limitations on grants.

(a) *Canals and watercourses.* No grant shall be made under this part for any project having as its principal purpose and permanent effect:

(1) The channelization, damming, diversion, or dredging of any natural watercourse, or

(2) The construction or enlargement of any canal except a canal or raceway designated for maintenance as an historic site.

(b) *Real property.* No part of any grant made under this part shall be used for the acquisition of any interest in real property.

(c) *Maintenance.* No part of any grant made under this part shall be used for the payment of maintenance costs in connection with a project constructed (in whole or in part) with Federal financial assistance under the Local Public Works Act.

§ 316.7 Priority of projects.

(a) *Allocation of funds.* (1) In making grants under this part, when the average national unemployment rate for the three most recent consecutive months for which data is available from the United States Department of Labor, has been at least 6½ percent:

(i) Seventy percent of all amounts appropriated to carry out the Local Public Works Act shall be allocated for project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available exceeds the average national unemployment rate for the same period of time. The Assistant Secretary shall expedite and give priority to applications in this category.

(ii) The remaining thirty percent of all amounts appropriated to carry out the Local Public Works Act shall be available for distribution according to priority as listed below:

(A) Project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available is more than 6½ percent but not more than the average national unemployment rate for the same period of time, and

(B) Project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available is 6½ percent or less. These project applications will be considered only when funding of such projects is necessary to fulfill the minimum funding level required for each State or if funds are available in the 30 percent category.

(b) *State limitations:* Not less than one-half of one percent or more than twelve and one-half percent of all amounts appropriated to carry out the Local Public Works Act shall be granted for local public works projects within any one State, except that not less than one-half of one percent of the total of all funds appropriated for this part shall be granted for public works projects in Guam, the Virgin Islands, and American Samoa, in the aggregate.

§ 316.8 Allocation of program resource levels to regional offices.

(a) *Regional allocations.* To assist in the orderly utilization of program resources, the Assistant Secretary will assign to each regional office a target level of anticipated project assistance for the total of all areas served by that regional office. Such regional allocations of program resources shall be based on appropriation apportionments available to EDA and shall be calculated on a formula basis reflecting the relative numbers of unemployed persons in the States served by the regional office and the level of unemployment rates in those States.

(b) *State planning ceilings.* Regional offices shall observe with respect to each State served by it a ceiling on project approval recommendations. The allocation of funds to regions and States will be made after the funds have been apportioned to EDA and will be based on unemployment data available at that time. EDA will announce the date on which the funds are apportioned and the allocation is made. The formula by which the planning ceiling for each State will be established is as follows:

Subject to program administrative costs and statutory minimum and maximum amounts allocated to individual States by the legislation, 65 percent of the funds will be set aside as planning ceilings for individual States based on the share of unemployed workers residing in a State of the total national unemployed; 35 percent of the funds will be set aside as planning ceilings to individual States based on the relative severity of unemployment for each State above the composite unemployment rate for all States.

(c) It is to be understood that the planning ceiling assigned to each State is not to establish an entitlement to any minimum level of project assistance within that State (unless such is the statutory maximum or minimum) but is adopted only for the purpose of furthering the objective of assuring that adequate consideration is given to the relative needs of various sections of the country. Where the planning ceiling calculated on the formula basis is less than the statutory minimum assured for each State the statutory minimum shall be the planning ceiling, and where the planning ceiling calculated on the formula basis is greater than the statutory maximum for any State the statutory maximum shall be the planning ceiling.

(d) 120 days after the date on which funds are first apportioned for program assistance under the Act and at any time thereafter the Assistant Secretary may reconsider the regional allocations and State ceilings previously established and make such adjustments as are determined to be reasonable in achieving the purposes of the Act.

§ 316.9 Determination of unemployment rates.

(a) The average unemployment rate for the three most recent consecutive months for which data is available for a State or local government applicant under this part may be determined from information obtained in the following order:

(1) *The United States Department of Labor.* (i) EDA's Qualification Division has provided to EDA's Regional Offices and Economic Development Representatives a list, prepared by the United States Department of Labor, which shows the average unemployment rate for the three most recent consecutive months for:

(A) The entire nation;

(B) Each State; and

(C) Where available, "identifiable" local governments.

(ii) On or before September 15, 1976, EDA's Qualification Division will provide to EDA's Regional Offices and Economic Development Representatives a list, prepared by the United States Department of Labor, which will show the average unemployment rate for the three most recent consecutive months for approximately 1,000 counties throughout the nation.

(iii) The above lists will be updated and expanded if and when more information is obtained from the United States Department of Labor.

(2) If not available from the United States Department of Labor the average unemployment rate for the three most recent consecutive months for which information is available shall be obtained from the State employment security agency.

(3) Indian tribes shall submit information from the Bureau of Indian Affairs of the United States Department of Interior or other appropriate sources acceptable to the Assistant Secretary.

(b) If requested by an applicant, the unemployment rate of a local government shall be based upon the unemployment rate of any community or neighborhood (defined without regard to political or other subdivisions or boundaries) within the jurisdiction of such local government, except that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood. The applicant shall apply to the State employment security agency for the average unemployment rate for the three most recent consecutive months for which data is available. The data obtained from the State employment security agency will be accepted by the Assistant Secretary.

(c) If requested by an applicant, in determining the unemployment rate of a local government, unemployment in those adjoining areas from which the labor force for a project may be drawn shall be taken into consideration.

(d) The Assistant Secretary has obtained from all State employment security agencies their cooperation to provide all applicants, other than Indian tribes, with unemployment data.

(e) EDA will not accept an unemployment rate determination that is based on data obtained for a time period which is longer than twelve months prior to the date of the application as stated therein.

(f) The unemployment rate established by one of the procedures above, will determine whether the area qualifies for the 70 percent or 30 percent category as described in § 316.7 above.

(g) No data regarding unemployment rates for time periods after the date of the application as stated therein, may be changed.

§ 316.10 General considerations and requirements for financial assistance.

(a) *Project selection procedure*—(1) *Considerations.* In line with the purposes and objectives of the Act, EDA's goal of choosing projects having the greatest potential for furthering these purposes and objectives, the relative importance of various factors in determining this potential, and the availability and consistency of data specified in the Act, the following project selection procedures have been adopted.

(2) *Project selection formula.* The ranking procedure developed for selecting projects within each State's planning allocation uses those project and area factors that will contribute most to achieving substate equity in the distribution of planning funds and insures that the relatively more economically efficient projects are selected. All factors will be standardized for comparability purposes and assigned policy weights to reflect their importance in the ranking procedure.

(i) *Basic rank.* The basic rank of a project will be determined by the following factors:

(A) The number of unemployed workers in the project area averaged over the three most recent months for which data is available. An area characterized as having a high unemployment rate overall is generally characterized as having a high unemployment rate in the construction industry. Similarly, an area characterized as having a large number of unemployed overall is generally characterized as having a relatively large number of unemployed construction workers as a share of the overall unemployed. Therefore, this factor gives consideration to construction unemployment. This factor will constitute 30 percent of a project's basic rank.

(B) Severity and duration of unemployment, as measured by the unemployment rate prevailing in the project area averaged over the last three months for which data is available. This factor will constitute 25 percent of a project's basic rank.

(C) The relationship of labor cost to total project cost, defined as the ratio of total wages to total project cost. In formulating project proposals, applicants should bear in mind the intent of the Act to reduce unemployment generally, and to give due consideration to the amount of unemployment and underemployment in the construction and construction-related industries. As previously indicated, projects eligible for funding would include, but are not limited to, such local public works projects as municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads, civic centers, museums, health, education and social service facilities, convention centers, and the upgrading of existing facilities through renovation, repair, and other related improvements. To implement the legislative objective of assisting the construction and construction-related industries: (*1*) projects having labor costs greater than 35 percent of total project costs, but not more than 80 percent, will receive the maximum score for this factor; and (2) projects having labor costs ranging from 10 to 35 percent of total project costs will be ranked according to their respective percentages, with projects having 35 percent receiving the maximum score for this factor. Finally, it should be emphasized that supplemental assistance provided for under the Act will be considered as part of the total project costs; the latter is defined as funds from all sources, whether Federal, State, or local. The relationship of labor cost to total project cost will constitute 30 percent of a project's basic rank.

(D) The level of income prevailing in the project area (which for purposes of this factor is defined as the applicant's jurisdiction). This factor will constitute 15 percent of a project's basic rank.

(ii) *Additional considerations.* A project's basic rank will be increased if the project meets one or more of the following criteria:

(A) Exhibits potential for providing long-term benefits. The basic rank of a project will be increased up to a maximum of 10 percent if it meets this criterion. The amount of increase will be determined by the nature and extent of the long-term benefit(s) to be provided by the project.

(B) Is sponsored by a general purpose unit of local government, as defined in § 316.2 above. Projects meeting this criterion will have their basic ranks increased by five percent.

(C) Is sponsored by a special purpose unit of local government or a political subdivision of a State. Projects meeting this criterion will have their basic ranks increased by three percent.

(D) Relates to existing approved plans and programs of a local community development or regional development nature or promotes or advances longer range plans and programs. The basic rank of a project meeting this criterion will be increased by five percent.

(iii) *Final rank.* The final rank of a project is to be determined by summing the basic rank and increases attributable to the additional considerations defined above.

(3) *Application of project selection formula*—(i) *Geographic considerations.* Projects will be ranked and assessed relative to other projects submitted from the *same* State until such time as the Assistant Secretary determines, pursuant to paragraph (a)(2) of this section, that comparision of projects submitted from different States is required to either further the purposes and objectives of the Act or to comply with statutory requirements.

(ii) *Priority considerations.* Within each State, projects submitted from areas with an unemployment rate exceeding the national average for the most recent consecutive three months will be ranked and compared only with projects submitted from other areas in this priority category. Similiarly, projects submitted by areas with an unemployment rate below the national average for the most recent consecutive three months will be ranked and compared only with projects submitted from other areas in the same priority category. Applicants who anticipate the project labor requirements will draw upon the unemployed and underemployed labor resources of other jurisdictions outside the immediate project area (such as a multi-county area) will be given priority consideration on the basis of the unemployment rate prevailing in the extended geographical (labor market) area. Similarly, the basic rank computations discussed above will be computed in aggregate on data provided for the extended geographical area.

(iii) *Project selection.* Within each State and priority category, projects will be selected until the State planning allocation has been exhausted or until such time as the Assistant Secretary determines that the remaining funds made available under the Act must be reallocated among the States. In selecting projects for funding, the Assistant Secretary shall give primary consideration to the final rank of a project. However, the Assistant Secretary may approve projects which rank below other projects as may be necessary to avoid an undue geographic concentration of program assistance in any particular area or areas of a State or as may be necessary to meet the required distribution of program resources between the statutorily mandated priority classes or when the sum of the total project labor requirements in a project area exceeds the available labor.

(b) An application shall be rejected unless:

(1) It is properly prepared on appropriate forms prescribed by the Assistant Secretary.

(2) It contains one of the following:

(i) Information showing that the area conforms to an area for which United States Department of Labor unemployment statistics are available; or

(ii) Unemployment information from the appropriate State unemployment security agency.

(3) It contains a certification by the applicant that construction on the project has not yet been initiated;

(4) It contains assurances, satisfactory to the Assistant Secretary, that onsite labor can begin within ninety days of project approval;

(5) Where applicable, it relates the proposed project to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions;

(6) It contains evidence, where feasible, that the proposed project will promote or advance longer range plans and programs;

(7) It contains adequate assurances that all laborers and mechanics employed by contractors or subcontractors on the proposed project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5).

(8) It contains adequate assurance by the applicant and by any "other parties" as defined in 15 CFR Subtitle A, Part 8, that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under the proposed project; and an assurance that it is not involved in any civil rights litigation or if it is involved in a lawsuit or Federal administrative action alleging discrimination it shall provide a brief narrative description of the action alleging discrimination and its outcome.

(9) It contains certification, by the properly authorized official of the Federal agency or State or local government, that no funds budgeted and available or otherwise specifically committed for the project applied for in its application shall be reduced, diminished, or replaced by funds requested under this part.

(10) It is, in the opinion of the Assistant Secretary, accurate and complete.

(c) Applicants should be advised that false representations and/or certifications in connection with applications for assistance under this part may be the basis for criminal liability under title 18 of the United States Code.

(d) No cost overruns for public works projects previously funded under this part will be approved.

(e) Project costs for administration, plans, specifications, estimates or other A/E costs, which have been incurred prior to the date of application, will not be funded.

(f) Applications will not normally be approved where any of the following conditions exist:

(1) The applicant has not obtained rights to the project site, including easements and rights-of-way, in one of the following ways:

(i) The eligible applicant owns the project facility and/or site clear of any encumberances;

(ii) The eligible applicant holds a noncancellable long-term lease on the project facility and/or site which is defined as 20 years or the useful life of the facility, whichever is longer; or

(iii) The eligible applicant holds a clearly enforceable option through time of grant approval to purchase the project facility and/or site and demonstrates that it has sufficient funds available to complete the purchase.

(2) The project request is for a supplemental to another Federal, State or local grant which has not been approved by the applicable grant agency.

(3) The project's labor requirements equal or exceed one-third of the project area's unemployed labor force.

(g) The maximum amount of financial assistance made available under this part should not exceed $5 million for each project; however, the Assistant Secretary may, in his discretion, waive this policy for good cause.

(h) Projects with extremely high ratios of labor costs to total project costs (greater than 80 percent) and projects with extremely low ratios of labor costs to total project costs (less than 10 percent) will be rejected and denied.

§ 316.11 Compliance with other Federal requirements.

Each applicant shall, as a condition to its receipt of a grant under this part, comply with the following relevant Federal requirements:

(a) All labor standards including those relating to the payment of wages, working conditions, anti-kickback prohibitions and equal employment as provided 13 CFR 309.6;

(b) Those concerning relocation and related payments to all persons displaced as a result of the development of a public works project with funds received under this part, as provided for in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, and 13 CFR Part 310;

(c) If the project involves a detention facility, those sections of Part E of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, found at 42 U.S.C. 3750 b(1) and (4)–(9);

(d) The provisions of OMB Circular A–95, except during the first ninety days after EDA begins receiving applications when the following procedures shall apply:

(1) Applicants must submit their full applications or notifications of intent to apply to the appropriate clearinghouse as early as possible.

(2) Upon submission of an application to EDA, the applicant must certify that he has submitted the full application to the appropriate clearinghouse.

(3) EDA may begin processing the application upon its receipt but will make no final approval of an application until 30 days after its receipt unless clearinghouse response is received before 30 days have elapsed.

(4) During the first ninety days, applications received by EDA need not have State application identifier numbers.

(5) Clearinghouse comments will be submitted directly to EDA; EDA will consider such comments until it has finished processing the application.

(e) All environmental requirements, to the maximum extent possible, as determined by the Assistant Secretary, including, but not limited to:

(1) The National Environment Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); and EDA's requirements found in § 316.13 below;

(2) The Clean Air Act, as amended (42 U.S.C. 1857–1858a);

(3) The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251–1376);

(4) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) and EDA's requirements found in § 316.13 below;

(5) The Wild and Scenic Rivers Act (16 U.S.C. 1271–1287);

(6) The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(7) The Historical and Archeological Data Preservation Act, as amended (16 U.S.C. 469 et seq.).

(f) 13 CFR 309.9, entitled "Records and Audit;"

(g) 13 CFR 309.27, entitled "Land use near Federal airfields;"

(h) 13 CFR 309.14, entitled "Design, construction, and alteration of buildings to accommodate the physically handicapped;"

(i) 13 CFR 309.26, entitled "Project modification;"

(j) 13 CFR Part 314, entitled "Property management standards," except 13 CFR 314.6(a), 13 CFR 314.6(b), and 13 CFR 314.50.

(k) The National Flood Insurance Program and EDA's requirements regarding flood hazards found at 13 CFR 309.15; and

(l) Other laws affecting this program.

§ 316.12 Acceptance of applications.

(a) Applications for assistance under this part shall only be submitted to the appropriate EDA Regional Office, as provided in 13 CFR 301.31.

(b) Applications shall be recorded and deemed received upon their arrival at the appropriate EDA Regional Office.

(c) EDA shall endeavor, within five working days from the date the application is actually received by the appropriate Regional Office, to determine whether the application has been completely and properly prepared, and contains accurate unemployment rates. An application may be rejected (denied) unless it contains full and accurate information including the requirements of § 316.10 above. By the end of the fifth working day after the date the application was received, the Regional Director should notify the applicant if the application has been rejected, and state what is needed to properly complete the application. However, EDA reserves the right during the 60 day period after receipt of an application to reject an application for substantially being incomplete, improperly prepared, or otherwise failing to meet the requirements of this part.

§ 316.13 Lease of project facilities.

(a) The project facility may be leased by the grantee to a non-profit operator providing the applicant maintains a continuing significant economic interest in the project and is not acting simply in a passive role for a prospective lessee, and such facility is used for the purpose of the grant.

(b) The project facility may be leased by the grantee to a profit making operator provided all of the following conditions are met:

(1) The lease is incidental to the project and not its principal purpose;
(2) The lease does not change the public nature or character of the purpose of the project as a whole; and
(3) The applicant maintains a continuing significant economic interest in the project and is not acting simply in a passive role as applicant for a prospective lessee.

§ 316.14 Environmental considerations.

(a) *The National Environmental Policy Act.* (1) Since the Local Public Works Act requires applications to be processed within 60 days of their acceptance, EDA will not be able to prepare environmental impact statements for those projects which may significantly affect the quality of the human environment. However, to the fullest extent possible within this time period, EDA will analyze a project's potential environmental impacts and give appropriate consideration to environmental impacts in making its final decision.

(2) In order that EDA may conduct its environmental analysis of proposed projects, applicants shall include the following materials with their application, except with respect to subsections (iii) and (iv) if such materials are not available in which case the applicant must so certify:

(i) a description of those elements of the proposed project which will have an impact on the environment, the nature of the environment which will be affected; and data on the expected environmental impact;
(ii) alternatives to the proposed project;
(iii) any environmental analysis previously conducted by local, State, federal agencies; and
(iv) evidence of public reaction to the project, such as transcripts of local public hearings held on the proposal.

(3) EDA will independently review and analyze environmental information submitted by applicants.

(i) Where appropriate, EDA, within the 60 day limit, may seek the views of other government agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) If a project appears to be highly controversial for environmental reasons and there is a need to further understand the basis of the controversy, EDA may, within the 60 day limit, request the views of concerned residents through a newspaper notification or a public information meeting held near the project site.

(4) EDA shall deny an application if, after consideration of the benefits of a project against any environmental costs, it concludes that the environmenal costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. EDA, where necessary, may condition approval of a project upon the adoption of specified measures designed to mitigate any adverse environmental impacts.

(b) *The National Historic Preservation Act.* (1) Applicants shall include with their applications either a statement of their State Historic Preservation Officer's views of the proposed project or shall certify that their State Historic Preservation Officer was provided with a detailed project description and request for comments prior to application's submission to EDA.

(2) If necessary, EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation. EDA will use the results of this coordination process, even though completion of this process may not be possible, as a factor in making a final decision on the project.

§ 316.15 Final determination.

(a) All applications for assistance under this part shall be processed by the appropriate EDA Regional Office.

(b) The Regional Director shall notify the applicant, in writing, when its application has been rejected and state the reasons therefor.

(c) The Regional Director shall forward to the Assistant Secretary in Washington, D.C., all applications which he deems are properly completed and eligible for assistance under this part.

(d) The Assistant Secretary shall review all applications received from the Regional Directors and make the final determination.

(e) If no determination has been made by the end of the sixtieth day after the application was received as determined in § 316.12 above, the application will be deemed to be approved.

§ 316.16 Suspension and termination.

(a) *Suspension or termination for cause.* EDA may initiate a suspension or termination of a project approved under this part for failure by the grantee to adhere to the requirements of the grant. EDA shall promptly notify the grantee in writing of the suspension or termination, specifying the reasons for the action and its effective date. Payments made to the grantee or recoveries by EDA under grants suspended or terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(b) *Suspension or termination for convenience.* EDA or the grantee may initiate a suspension or termination of a project approved under this part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the conditions of the action, including the effective date, and in the case of partial suspension or termination, the portion to be suspended or terminated. The grantee shall not incur new obligations for the suspended or terminated portion, after the effective date, and shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the grantee for the Federal share of the non-cancellable obligations, properly incurred by the grantee prior to suspension or termination.

PART 317—ROUND II OF THE LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT PROGRAM

Grants of Assistance

Subpart A—Introduction

Subpart B—Eligibility Criteria

Subpart C—Application Procedure

Subpart D—Allocation of Program Funds

Subpart E—Planning Targets

Subpart F—Project Selection Procedure

Subpart G—General Requirements

Subpart H—Eligibility of Non-Profit Entities

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Subpart A—Introduction

§ 317.1 Purpose.

The purpose of this part is to set forth the requirements and procedures pursuant to which eligible applicants may receive grants under the "Local Public Works Capital Development and Investment Act of 1976," as amended by the "Public Works Employment Act of 1977." Pub. L. 95-28.

§ 317.2 Definitions.

"Assistant Secretary" means the Assistant Secretary of Commerce for Economic Development or his delegate.

"Endorsement" means the process by which an applicant can select a project, which was originally submitted by another applicant, for consideration for funding from its planning target.

"General purpose unit of local government" means any city, county, town, parish, or any other "unit of general local government" as included within the definition of that term by section 104 of the Intergovernmental Corporation Act of 1968 (42 U.S.C. 4201 et.seq.)

"Indian tribe" means the governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other tribal organization, or entity, or Alaskan native village.

"Initiation of construction" means that notice to proceed or its equivalent has been issued or on-site labor has begun, except where on-site labor has commenced on the project but the project was abandoned due to lack of funds or where the project is to expand or modify a completed facility which has integrity in and of itself.

"Local Public Works Act" means the "Local Public Works Capital Development and Investment Act of 1976," as

amended by the "Public Works Employment Act of 1977," Pub. L. 95-28.

"Local government" means any city, county, town, parish, or other political subdivision of a State (including local school districts), and any Indian tribe.

"Maintenance costs" means costs that are incurred for any necessary repairs or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but rather keep it in an efficient operating condition.

"Minority business enterprise" means a business at least fifty percent of which is owned by minority group members or, in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by minority group members.

"Minority group member" means a citizen of the United States who is Negro-Spanish-speaking, Oriental, Indian, Eskimo, or Aleut.

"Non-primary city" means any city, township, or village with a population less than 50,000 persons.

"Pocket of poverty" means a project area with a population of 4,000 or more persons and an unemployment rate of at least 8.5 percent which becomes qualified for assistance using the procedures contained in section 108(e) of the Local Public Works Act. A pocket of poverty must be located within a primary city which did not receive a planning target.

"Political subdivision of a State" means the agencies, instrumentalities and authorities established or authorized by State law including, but not limited to, special districts and regional authorities formed by local governments.

"Project area" means a primary city; the balance of a county in which a primary city is located; a county without a primary city; a pocket of poverty; or an Indian reservation or tribal land (trust and/or restricted land), as appropriate under the provisions of § 317.33.

"Primary city" means any city or township (which performs the same services as a city) with a population of 50,000 or more persons, as determined by the Bureau of the Census 1973 estimates.

"Renovation, repair, or other improvements" means only those activities which either substantially or appreciably increase the value or prolong the life of a public facility and excludes those activities which keep the public facility in ordinary efficient operating condition during its probable useful life.

"Round I" of funding under the local Public Works program refers to the funding of projects with money appropriated by Pub. L. 94-447.

"Round II" of funding under the Local Public Works program refers to the funding of projects with money appropriated by Pub. L. 95-29.

"State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

Subpart B—Eligibility Criteria

§ 317.10 Eligible applicants.

A State or a local government, as defined in § 317.2, is eligible for assistance under this part if it is located in an area described in § 317.11.

§ 317.11 Eligible areas.

(a) Subject to the provisions of subsection (b) of this section, assistance under this part may only be extended to eligible applicants located in project areas, as defined in § 317.2, for which planning targets have been established. Planning targets have been established in the following manner, subject to the provisions of § 317.42 and Subpart E of this part.

(1) Where the State average unemployment rate is 6.5 percent or higher, planning targets have been established for project areas with unemployment rates of at least 6.5 percent.

(2) Where the State average unemployment rate is less than 6.5 percent, planning targets have been established for project areas with unemployment rates of at least the State average unemployment rate.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, planning targets have been established for pocket of poverty project areas only where such areas have unemployment rates of at least 8.5 percent.

(b) In States which are receiving the statutory minimum allocation of Local Public Works funds and for which the Assistant Secretary has waived the priority ranking of applicants required by section 108(c) of the Local Public Works Act, assistance under this part may be extended to eligible applicants in project areas as necessary to expend the statutory minimum allocation.

§ 317.12 Eligible applications for round II funding.

The following applications shall be eligible for consideration for funding under round II of the Local Public Works program:

(a) Applications for Local Public Works projects submitted by eligible applicants located in eligible areas, as defined in § 317.11, which were received by EDA before December 24, 1976, including applications originally filed before that date which were returned for deficiencies; and

(b) New applications from eligible applicants located in eligible areas subject to the requirements of § 317.31.

§ 317.13 Types of grants.

(a) *Direct grants.* (1) The Assistant Secretary may make direct grants to any State or local government for construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects, including those for which Federal financial assistance is authorized under provisions of law other than the Local Public Works Act. Such grants may include funds for the completion of plans, specifications and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

(2) Applications under this section will be approved only if the applicant submits with its application, if applicable and required by EDA, a written certification from the other Federal agency/agencies primarily concerned with projects of the type involved in the application that the project meets all applicable Federal statutory and regulatory requirements to the extent necessary to assure the utilization of the project for the services intended.

(3) The Federal share of any project for which a grant is made under this subsection shall be 100 percent of the cost of the project exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

(b) *Supplemental grants.* (1) The Assistant Secretary may make supplemental grants for the purpose of increasing the Federal contribution to 100 percent of the project cost for any Federally assisted public works project authorized by any Federal law other than the Local Public Works Act.

(i) Ordinarily, the Assistant Secretary will award supplemental grants increasing the Federal contribution to 100 percent of the project cost exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

(A) For the funding of revived applications during round II, the Assistant Secretary may waive the requirement of paragraph (b)(1)(i) where:

(*1*) The applicant had provided the assurance that no funds were budgeted and available or otherwise specifically committed for the project in round I; and

(2) The applicant demonstrates that local funds apparently available were diverted from some other use solely to meet the additional requirements of other Federal programs caused by the delay in funding between rounds I and II.

(ii) The applicant shall submit with its application a written certification that actual construction of the project has not yet been initiated because of lack of funding for the non-Federal share.

(A) The Assistant Secretary may waive this requirement where he finds that construction was initiated after filing of the application under round I due to the requirements of the other Federal program.

(iii) The applicant shall submit written certification obtained from the other Federal agencies involved in the project that:

(A) Federal financial assistance for the project has been approved and the funds are immediately available for the project; and

(B) the project meets all applicable Federal statutory and relevant related requirements.

(2) The Assistant Secretary also may make grants in an amount necessary to provide all or part of the required State or local share (but not both shares) of

the cost of any public works project for which financial assistance is authorized by State or local law requiring such contribution if the applicant submits with its application a written certification from the appropriate authority that:

(i) The share of financial assistance not applied for has been properly approved and is immediately available for the project;

(ii) The project meets all applicable statutory and other relevant requirements of the law; and

(iii) Construction of the project has not yet been initiated.

(3) Grants under this subsection may include funds for the completion of plans, specifications, and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

§ 317.14 Eligible projects.

Eligible projects include projects for the construction of public works facilities, including but not limited to municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, other public facilities, and the transportation of and providing of water to drought-stricken areas as designated by the Federal Disaster Assistance Administration or other Federal agency or department authorized to designate drought-stricken areas.

§ 317.15 Ineligible projects.

The following projects shall be ineligible for funding under this part:

(a) Canals and watercourses. Unless the requirements of § 317.72 are met, no grant shall be made under this part for any project having as its principal purpose and permanent effect:

(1) The channelization, damming, diversion, or dredging of any natural watercourse, or

(2) The construction or enlargement of any canal except a canal or raceway designated for maintenance as a historic site.

(b) Projects on which construction has been initiated. (1) For projects seeking a supplemental grant under § 317.13 (b) (1), the project will be eligible where construction has been initiated if the Assistant Secretary determines that construction was initiated after filing the application under round I due to the requirements of the other Federal program.

(c) Projects on which on-site labor cannot begin within 90 days after receipt of notification of project approval.

(d) Projects with extremely high ratios of labor costs to total project costs (greater than 80 percent) and projects with extremely low ratios of labor costs to total project costs (less than 10 percent).

(e) Projects whose costs exceed the planning targets established by subpart E. Such projects are ineligible unless the applicant funds those costs which exceed the amount of the planning target.

§ 317.16 Projects ineligible unless accompanied by unusual circumstances.

Projects will not normally be approved where any of the following conditions exist.

(a) The applicant has not obtained rights to the project site, including easements and rights-of-way, in one of the following ways:

(1) The eligible applicant owns the project facility and/or site clear of any encumbrances;

(2) The eligible applicant holds a noncancellable long-term lease on the project facility and/or site which is defined as 20 years or the useful life of the facility, whichever is longer; or

(3) The eligible applicant holds a clearly enforceable option through time of grant approval to purchase the project facility and/or site and demonstrates that it has sufficient funds available to complete the purchase.

(b) The project request is for a grant supplemental to another Federal, State or local grant which has not been approved by the applicable grant agency.

(c) The project's construction will involve the use of raw materials not mined or produced in the United States, or United States manufactured articles not substantially made from raw materials mined or produced in the United States, or manufactures not manufactured in the United States.

(1) The restriction contained in paragraph (c) of this section will not apply to any project for which the Assistant Secretary makes one of the following determinations:

(i) The restriction is not in the public interest; or

(ii) The restriction would cause unreasonable project costs; or

(iii) Materials or articles, either raw or manufactured, needed in the construction of the project are not available in the United States in reasonable and sufficient commercial quantity and satisfactory quality.

§ 317.17 Eligible project costs.

(a) The following types of project costs are eligible for funding under this part.

(1) Construction and facility improvement costs;

(2) Eligible expenses and payments under Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646);

(3) Costs for capital equipment not included in the construction contract;

(4) Costs for completing and updating plans, specifications, and estimates—where either architectural design/preliminary engineering or related planning has already been undertaken, and where additional architectural and engineering work or related planning is required to permit construction of the project;

(5) Other A/E costs such as inspection fees and test borings;

(6) Administrative costs including legal and audit costs; and

(7) Other costs not inconsistent with the Local Public Works Act and allowed by Federal Management Circular No. 74-4.

§ 317.18 Ineligible project costs.

(a) *Real property.* No part of any grant made under this part may be used for the acquisition of any interest in real property.

(b) *Maintenance.* No part of any grant made under this part may be used for the payment of maintenance costs in connection with a project constructed (in whole or in part) with Federal financial assistance under the Local Public Works Act.

(c) *Cost overruns.* No part of any grant made under this Act may be used for cost overruns for public works projects previously funded under this Act.

(d) *Prior expenses.* No part of any grant made under this part may be used for project costs for administration, plans, specifications, estimates or other A/E costs, which have been incurred prior to the date of original application.

(e) *Construction by State or local governments or Indian tribes.* No part of any grant made under this part may be used for the payment of construction activities directly performed by any department, agency or instrumentality of any State or local government or any Indian tribe.

(f) *Interest.* No part of any grant made under this part may be used for interest on interim construction financing except for supplemental grants where authorized by other program legislation.

§ 317.19 Construction requirements.

(a) *Competitive bidding.* (1) Construction of each project funded under this part shall be performed by contract awarded by competitive bidding, unless

(i) The Assistant Secretary makes a determination that, under circumstances relating to that project, a method of contract award other than competitive bidding is in the public interest.

(2) If the Assistant Secretary does not waive the competitive bidding requirement, the following procedures apply.

(i) Contracts for the construction of such projects shall be awarded on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility.

(ii) The award of a contract for the construction of a project funded under this part may be subject to review by the Assistant Secretary. The Assistant Secretary may withhold his concurrence from the award of a contract for good cause.

(iii) No requirements or obligations shall be imposed as conditions precedent to the award of a contract or to the Assistant Secretary's concurrence in the award unless such requirements or obligations are lawful and set forth in the advertised specifications.

(b) *Minority business enterprise.* (1) No grant shall be made under this part for any project unless at least ten percent of the amount of such grant will be expended for contracts with and/or supplies from minority business enterprises.

(2) The restriction contained in paragraph (1) of this subsection will not apply to any grant for which the Assistant Secretary makes a determination that the ten percent set-aside cannot be filled by minority businesses located within a reasonable trade area determined in relation to the nature of the services or suppplies intended to be procured.

§ 317.20 Maximum project cost.

The maximum amount of financial assistance made available under this part should not exceed $5 million for each project; however, the Assistant Secretary may, in his discretion, waive this policy for good cause.

Subpart C—Application Procedure

§ 317.30 Revival of applications currently on file.

(a) Unfunded applications meeting the criteria described at § 317.12(a), with the exception of applications described in subsection (b) of this section, will be revived if the project area in which such applicants are located receives a planning target or set-aside. EDA will revive these applications for consideration under the second round of funding of the Local Public Works program in the following manner.

(1) EDA will revise and update these applications to bring them into conformance with the new program requirements and procedures as described in these regulations.

(2) The applicant will provide EDA with such additional information and certifications, including revised project cost estimates, as required to bring the application into conformance with the legislative and administrative changes to the Local Public Works program.

(i) The information and certifications described in paragraph (2) of this subsection will be provided to EDA on such forms and in such manner as the Assistant Secretary directs.

(b) Pocket of poverty applications currently on file and non-pocket of poverty applications currently on file for which applicants request consideration as pocket of poverty applfcations will be revived for consideration under round II of the Local Public Works program in the following manner.

(1) Where an applicant requests use of the pocket of poverty criteria in determining its project area, that request will be granted only if the applicant meets the requirements of § 317.51(a)(1).

(2) All projects using the pocket of poverty criteria must be located in the community or neighborhood proposed as the project area. Where necessary, applicants will revise their applications to locate the projects within the community or neighborhood proposed as the pocket of poverty area.

(3) Pocket of poverty applicants will provide EDA with the following information:

(i) An exact description of the community or neighborhood proposed as the project area;

(ii) The appropriate unemployment data for the project area obtained from the State Employment Security Agency; and

(iii) Such additional information and certifications, including revised project cost estimates, as required to bring the application into conformance with the legislative and administrative changes to the Local Public Works program.

(c) Applications currently on file will be deemed revived by EDA when all relevant and necessary materials for the reevaluation of the application are received in the proper form and manner from the applicant.

§ 317.31 New applications.

(a) New applications shall be received where necessary to use a State's allocation or an applicant's planning target or an Indian tribe set-aside.

(b) Any new application under this part must be properly prepared on appropriate forms, as prescribed by the Assistant Secretary, and must contain all the information and certifications required by this part.

(c) New applications shall only be submitted to the appropriate EDA Regional Office as provided in 13 CFR 301.31.

(d) New applications shall be recorded and deemed received upon their arrival at the appropriate EDA Regional Office.

§ 317.32 Acceptance of revived and new applications.

EDA shall endeavor, within five working days from the date a new or revived application is actually received by the appropriate Regional Office, to determine if the application has been completely and properly prepared. An application may be rejected (denied) unless it contains full and accurate information as required by this part. The Regional Director should notify the applicant if the application contains deficiencies and state what is needed to properly complete the application. EDA reserves the right during the 60 day period after receipt of an application to reject an application for substantially being incomplete, improperly prepared, or otherwise failing to meet the requirements of this part.

§ 317.33 Project areas.

The project area of eligible applicants shall conform to the following requirements:

(a) *Counties with no primary cities.* The project area shall be the county for all applicants.

(b) *Counties with one or more primary cities.*

(1) Projects located in the primary city: the project area shall be the city.

(2) Projects located outside primary cities: the project area shall be the balance of the county excluding the primary cities.

(c) *Pocket of poverty applicants.* The project area shall be the community or neighborhood of the primary city, as described in § 317.51(a)(1), in which the project is located.

(d) *Indian tribe applicants.* The project area shall be the reservation or tribal land on which the project will be located.

§ 317.34 Determination of unemployment data.

(a) In considering applications during the round II of funding, EDA shall utilize the following data:

(1) The average number of unemployed persons in the applicant's project area during the twelve most recent consecutive months available; and

(2) The average unemployment rate of the applicant's project area for the twelve most recent consecutive months available.

(b) Unemployment data for project areas of applications currently on file and new applications will be determined as follows:

(1) *Primary city applicants.* EDA shall utilize the appropriate data for the city from the Bureau of Labor Statistics of the Department of Labor.

(2) *Balance of county and county without primary city applicants.* EDA shall utilize the appropriate data from the Bureau of Labor Statistics of the Department of Labor.

(3) *Pocket of poverty applicants.* The applicant shall define the exact location of the community or neighborhood in which the project will be located. Unemployment data will be obtained from the State Employment Security Agency for that commonity or neighborhood.

(4) *Indian tribe applications.* The Assistant Secretary may use population data as a proxy for unemployment data EDA shall utilize the appropriate data from the Bureau of Indian Affairs.

§ 317.35 Certifications.

An application shall be rejected unless it includes all the following materials:

(a) It contains adequate certification by the applicant and by any "other parties" as defined in 15 CFR Subtitle A, Part 8, that no person shall, on the grounds of race, color, sex (as required by section 110 of Pub. L. 94-369), or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under the proposed project.

(1) The application shall also contain an assurance that the applicant is not involved in any civil rights litigation; or, if it is involved in a lawsuit or Federal administrative action alleging discrimination, the applicant shall provide a brief narrative description of the action alleging discrimination and its outcome.

(2) The application shall also contain assurances of compliance with: Title VI of the Civil Rights Act of 1964; 28 CFR Part 42, Subpart F to the extent set forth in EDA's policies and guidelines; and Executive Order 11246 "Equal Employment Opportunities."

(b) It contains a certification by the applicant that construction on the project has not yet been initiated unless the provisions of § 317.15(b)(1) or §317.43(b)(3) are met.

(c) It contains a certification, satisfactory to the Assistant Secretary, that on-site labor can begin within ninety days of project approval.

(d) Where applicable, it contains a certification that the applicant has related the proposed project to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions.

(e) Where appropriate, it contains certification and evidence that the proposed project will promote or advance longer range plans and programs.

(f) It contains certification, by the properly authorized official of the Federal agency or State or local government, that no funds budgeted and available or otherwise specifically committed for the project applied for in its application shall be reduced, diminished, or replaced by funds requested under this part.

(1) With respect to supplemental grants under § 317.13(b)(1), this certification is not necessary if the applicant has obtained a waiver from the Assistant Secretary under § 317.13(b)(1)(i)(A).

(g) It contains adequate assurances that all laborers and mechanics employed on the proposed project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

(h) It contains a certification by the applicant that no contract for the project will be awarded to a bidder who will employ illegal aliens.

(i) It contains adequate assurances that the project will be constructed from raw materials mined or produced in the United States and from United States manufacturers substantially made from materials mined, produced or manufactured in the United States, unless the Assistant Secretary has made a determination under § 317.16(c)(1) that this requirement is not applicable to the applicant's project.

(j) Unless the Assistant Secretary has made a determination of inapplicability under § 317.19(b)(2), it contains certification satisfactory to the Assistant Secretary that at least ten percent of the amount of the grant will be expended for contracts with and/or supplies from minority business enterprises.

(k) It contains certification satisfactory to the Assistant Secretary that the project will be designed and constructed in accordance with the requirements for providing access to the physically handicapped and elderly as contained at 42 U.S.C. 4151 et seq.

(l) The Architectural and Transportation Barriers Compliance Board, established by the Rehabilitation Act of 1973, is authorized to insure that any construction and renovation done pursuant to any grant made under the Local Public Works Act complies with the accessibility standards for public buildings and facilities issued under the Act of August 12, 1968.

(l) Where an application uses the pocket of poverty project area, it contains certification satisfactory to the Assistant Secretary that employment engendered by the project will be offered preferentially to the residents of the neighborhood or community which defines the project area.

(m) Where an application involves a project normally funded by another Federal agency, it contains certification as required in § 317.13 (a)(2) and (b).

(n) It contains certification that special consideration, consistent with existing applicable collective bargaining agreements and practices, shall be given to the employment on the project of qualified disabled veterans, as defined in 38 U.S.C. 2011(1), and to qualified Vietnam-era veterans, as defined in 38 U.S.C. 2011(2)(A).

§ 317.36 False or inaccurate statements.

(a) An application shall be rejected unless it is, in the opinion of the Assistant Secretary, accurate and complete.

(b) Applicants should be advised that false representations and/or certifications in connection with applications for assistance under this part may be the basis for criminal liability under title 18 of the United States Code.

§ 317.37 Applicant's priority rating of projects.

(a) An applicant who has more than one application eligible for funding under the second round of the Local Public Works program shall submit as part of each such application its priority rating for each project for which it has applied.

(b) State governments, county governments, primary city governments, and any general purpose unit of local government may endorse a project of another applicant. If such a project is funded, it will apply against the planning target of the endorsing applicant but not the planning target of the receiving applicant.

§ 317.38 Amendment of existing applications.

Applications on file from round I may be amended to modify or change the project when, in the opinion of the Assistant Secretary, a compelling reason for such modification or change exists.

Subpart D—Allocation of Program Funds

§ 317.40 Allocation of funds to the States.

(a) Subject to program administrative costs, statutory minimum and maximum allocation requirements and statutory set-asides, 65 percent of the amounts appropriated for round II of the Local Public Works program will be allocated to each State based on its share of the total number of unemployed persons in all the States; the remaining 35 percent of the amounts appropriated for round II of the Local Public Works program will be allocated to those States with an average unemployment rate for the preceding twelve month period in excess of six and one-half percent (6½ percent) on the basis of the relative severity of unemployment in such States.

(b) Amounts allocated to the States according to this formula constitute State planning targets.

§ 317.41 Statutory minimum and maximum State allocations.

(a) The minimum allocation to each State of all amounts appropriated after the date of enactment of the Public Works Employment Act of 1977 to carry out this part shall be determined as follows:

(1) Subject to the provisions of paragraph (2) of this subsection, each State will receive at least three-quarters of one percent of such amounts appropriated to carry out this part.

(2) Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, in the aggregate, shall receive not less than one-half of one percent of such amounts appropriated to carry out this part.

(i) Population and other factors, as may be determined by the Assistant Secretary, will be used to establish planning targets for these territories.

(b) States whose unemployment data was converted for the first time under a new methodology to the benchmark data of the current population survey annual average compiled by the Bureau of Labor Statistics shall receive a percentage of funds under round II at least as great as the percentage of funds allocated to that State under round I prior to January 1, 1977.

(c) The maximum allocation for any State of all amounts appropriated after the date of enactment of the Public Works Employment Act of 1977 to carry out this part shall be twelve and one-half percent of such appropriation.

§ 317.42 Indian tribe set aside.

(a) The maximum allocation of all amounts appropriated after the date of enactment of the Public Works Employment Act of 1977 for projects sponsored by Indian tribes shall be two and one-half percent of such appropriation.

(b) All projects applied for by Indian tribes will be funded from this allocation, with the exception of those projects which qualify for funding under § 317.43.

(c) Each Indian tribe will receive a planning target determined in the following manner.

(1) Subject to the provisions of paragraph (c)(2) of this section, each Indian tribe's planning target will be based on population data, as determined by the Assistant Secretary.

(2) No Indian tribe will receive a planning target exceeding twelve and one-half percent (12½ percent) of the amount determined by subsection (a) of this section plus the amount of round I funds expended on Indian applications.

(3) Indian tribe planning targets will reflect the total six (6) billion dollar Local Public Works program authorization. Projects which were selected for funding during round I of the program will be deducted from the applicant's planning target.

(4) These planning targets will be ranked nationally and projects will be selected from high ranking targets until the amount of the set-aside is expended.

(5) Certain eligible Indian tribe applicants will not receive planning targets due to the procedure described in paragraphs (c)(3) and (c)(4) of this section which will result in insufficient funds.

(d) In the event applications have not been filed to exhaust the planning targets established under this section by September 1, 1977, such planning targets may be administratively reapportioned by the Assistant Secretary.

§ 317.13 Procedural errors set aside.

(a) An applicant who made an application before December 24, 1976 and whose application was not received, was not considered, or was rejected solely because of an error by an officer or employee of the United States may petition the Assistant Secretary to reconsider his application, subject to the provisions of § 317.61(b).

(b) In order to be funded from this set-aside, a project must meet all of the following requirements:

(1) The project would have been selected for funding under round I of the Local Public Works program but for the error described in subsection (a) of this section;

(2) The project has been identified by EDA as eligible for funding from the procedural error set-aside; and

(3) The project met all the requirements of the Local Public Works Act as in effect at the time of the error.

(c) Not to exceed seventy (70) million dollars may be used to fund projects under the authority of this section.

Subpart E—Planning Targets

§ 317.50 General considerations.

In order to insure an equitable geographic distribution of funds, EDA has established planning targets for States, sub-State areas and sub-State applicants.

(a) Sub-State area planning targets are computed for project areas which have unemployment rates equalling or exceeding the lower of 6.5 percent or the State average unemployment rate.

(1) Within each State, these planning targets will be ranked and projects will be selected from high ranking areas until the amount of planning target is expended.

(2) Sub-State area planning targets and sub-State applicant planning targets will reflect the total six (6) billion dollar Local Public Works program authorization, constructively following the sub-State 65/35 formula, as set forth in §317.52(a), for round I funds. Projects which were selected for funding during the round I of the program will be deducted from the sub-State area planning targets and sub-State applicant planning target.

(3) Certain eligible sub-State areas and sub-State applicants will not receive planning targets due to the procedure described in paragraphs (a)(1) and (2) of this section which will result in insufficient funds.

(4) A minimum planning target level of 75,000 dollars will be set in order to carry out the public works aspect of this program. In the case of areas which would receive a planning target below this minimum, no planning target would be established.

(i) Planning target funds below the 75,000 dollar minimum will be administratively reapportioned to the county government.

(A) If no county government exists, the funds will be administratively reapportioned.

(ii) County government planning target funds below the 75,000 dollar minimum will be administratively reapportioned by the Assistant Secretary.

(b) Funds requested for projects may not exceed the appropriate planning targets.

(c) EDA will use sub-State area and applicant planning targets as aids in the distribution of funds under this part. These planning targets do not, however, constitute entitlements. The Assistant Secretary reserves the right to adjust these planning targets as necessary to assure that each eligible area and applicant receives a planning target commensurate with its distress. If an eligible area or applicant does not receive a planning target which reflects its level of distress due to miscalculation, the Assistant Secretary may re-adjust other sub-State planning targets to rectify the miscalculation.

§ 317.51 State planning target.

Each State's overall planning target was established pursuant to the allocation formulae described in §§ 317.40 and 317.41, as appropriate. From each State's planning target, the following Statewide planning targets will be deducted.

(a) *Pocket of poverty planning target.* An amount, determined by multiplying the number of primary cities as described in paragraph (1) of this subsection by one (1) million dollars, will be deducted to fund applications from pocket of poverty areas. However, not more than twenty million dollars shall be available in any one State to fund these projects.

(1) Projects to be funded from this deduction must be located in a city which did not receive a planning target, except that a primary city which did not receive a planning target because its round I approvals exceeded its projected planning target is not eligible to submit pocket of poverty applications.

(2) Each pocket of poverty area must have a population of 4,000 or more persons and an unemployment rate of at least 8.5 percent for the most recent twelve months. A pocket of poverty must be a contiguous area and separate and distinct from other pocket of poverty areas. A pocket of poverty area may not be subdivided.

(3) In any State receiving a planning target under paragraph (a) of this section, the Assistant Secretary may waive the 8.5 percent unemployment rate requirement if he determines that an insufficient number of applications meeting this criterion have been submitted.

(3) Applicants with planning targets may fund projects in pocket of poverty areas from their planning targets.

(b) *State government planning target.* Except as the Assistant Secretary determines for the Commonwealth of Puerto Rico, State governments will be given a planning target which will be eight (8) percent of the total State allocation. The amount of this planning target is based on the approximate proportion of the dollar value of State government applications on file to the dollar value of the total number of applications from all States on file from round I.

(c) In the event applications have not been filed to exhaust the planning targets established under this section by September 1, 1977, such planning targets may be administratively reapportioned within the State by the Assistant Secretary.

§ 317.52 Sub-State area planning targets.

The amount of each State's allocation available for sub-State area planning targets will consist of the State's statutory allocation less the amount of the planning targets described in § 317.51.

(a) EDA has established planning targets for eligible sub-State areas, subject to the provisions of § 317.50(a), based on the sub-State 65/35 formula, which is the relative need of an area as determined by its number of unemployed persons compared to the number of unemployed persons in all eligible areas of the State and its unemployment rate compared to the lower of 6.5 percent or the State unemployment rate. Planning targets have been established in this manner for the following types of areas:

(i) Primary city;

(ii) Balance of county;

(iii) County with no primary cities.

(b) The sub-State areas described in subsection (a) of this section will be ranked according to their respective planning targets which will reflect the relative distress in each of the areas.

§ 317.53 Sub-State applicant planning targets.

EDA has divided the sub-State area planning targets into sub-State applicant planning targets. Subject to the provisions of § 317.50. EDA has established these applicant planning targets for the following types of applicants.

(a) *County government.* This planning target will be determined for each State based on the relative activity of county governments as determined by the dollar value of county government applications filed with EDA during round I compared to the total dollar value of applications filed by all applicants, with the exception of Indian tribes, in that State during round I. Subject to the provisions regarding school district participation as set forth in § 317.55, this planning target shall be available for funding projects of the county government.

(b) *Primary city government.* Subject to the provisions of § 317.55 regarding school district participation and subject to any incorporated areas in the city which will share in the planning target.

this planning target shall be available for funding projects of the city government.

(c) *Non-primary cities/townships located in balance of county and county without primary city areas.* The funds allocated to balance of county and county without primary city areas have been further distributed to non-primary cities and townships within these areas as applicant planning targets.

(1) These applicant planning targets are based on the unemployment data of the non-primary city or township calculated by EDA according to the census share method and according to the sub-State 65/35 formula. Where unemployment data is unavailable, the planning target funds will be administratively reapportioned.

(2) Normally, EDA has established these planning targets for non-primary city/township applicants which submitted applications in round I and which meet the requirements of § 317.50(a)(4). When an area's planning target funds exceed applications on file by 25 percent or 200,000 dollars, whichever is greater, the surplus funds will be reallocated as set forth in § 317.54.

(3) Subject to the provisions of § 317.55 regarding school district participation, these applicant planning targets shall be available for projects of the non-primary city or township.

(d) In the event applications have not been filed to exhaust the planning targets established under this section by September 1, 1977, such planning target funds may be administratively reapportioned by the Assistant Secretary.

§ 317.54 Reallocation of funds.

Surplus funds described at § 317.53(c)(2) will be reallocated as follows:

(a) If the amount of the surplus is sufficient, all pending applications in the balance of county or county without primary city area will be funded.

(1) After all pending applications have been funded, any further surplus will be reallocated to the county government.

(b) If the amount of the surplus is not sufficient to approve all pending applications, non-primary city/township applicants with applications will be ranked in order in accordance with the 65/35 formula as set forth in § 317.52(a) and funded until the surplus is expended.

(1) Any surplus remaining after the last project is approved will be allocated to the next ranking applicant with a project.

(2) In the event two or more projects rank equally, the surplus will be divided equally among them.

(c) If there are no pending applications in the balance of county or county without primary city area, the surplus will be administratively reallocated to the county government.

§ 317.55 School district participation in planning targets.

(a) Subject to the provisions of this section, school districts may share in the planning targets of:

(1) Primary cities or non-primary cities/townships; and

(2) County governments.

(b) In order to participate in these planning targets, the school district must have authority under local law to file an application.

(c) For a school district to share in the planning target of a primary city or non-primary city/township, the school district project must principally serve the residents of the primary city or non-primary city/township, e.g., at least 50 percent of the students served by a school project must be residents of that primary city or non-primary city/township.

(1) A school district project may be eligible to share in the planning target of more than one non-primary city/township if it principally serves those applicants.

(d) For a school district to share in the planning target of a county government, the school district must:

(1) Serve the entire county; or

(2) In the event the school district is located in a county with primarily unincorporated land area, the school district must, in order to share in the planning target of that county, meet the following requirements:

(i) The school district demonstrates that more than 50 percent of the area of the county is unincorporated;

(ii) The school district serves at least 40 percent of the population of the unincorporated area; and

(iii) The school district's project principally serves the residents of the unincorporated area, e.g., at least 50 percent of the students served by a school project must be residents of the unincorporated area.

(e) School districts will share in the planning targets listed in paragraph (a) of this section by jointly prioritizing their projects with the projects of those applicants whose planning targets they are sharing and by submitting a unified list of priority projects as required by § 317.37.

(f) Should the school district and the applicant whose planning target it shares fail to come to agreement with respect to prioritizing their projects, EDA will select projects according to factors which include, but are not limited to:

(i) Job creating potential;

(ii) Time necessary to complete the project;

(iii) Energy conservation;

(iv) Long term economic benefits; and

(v) Critical local needs.

Subpart F—Project Selection Procedure

§ 317.60 Conserving energy.

(a) In making grants for projects for construction, renovation, repair or other improvement of buildings, EDA shall also give consideration as between such building projects to those projects which will result in conserving energy. Such projects include, but are not limited to, projects to redesign existing public facilities for energy conservation purposes and projects using alternative energy systems.

(b) In giving such consideration EDA will permit increased funding for projects which meet the provisions of this section subject to the requirements of § 317.50(b).

§ 317.61 Projects selected from national set-asides.

(a) *Indian set-aside.* Subject to the provisions of § 317.42(c), each Indian reservation or tribal land has a planning target.

(1) In approving projects under this set-aside, EDA will take into consideration the number and dollar amount of projects approved under round I.

(b) *Procedural error set-aside.* (1) In order to be funded from this set-aside, a project must meet all the following conditions.

(i) The project must be eligible under § 317.43.

(ii) The project is located in an area which does not have a planning target.

(iii) The project met the requirements of the Local Public Works Capital Development and Investment Act of 1976, as enacted on July 22, 1976.

(2) Error projects located in eligible areas which receive planning targets will be funded from State and sub-State planning targets, but only if chosen by their applicants as priority projects.

(i) In the event the applicant's planning target is insufficient to fund the error project completely, the applicant may request the Assistant Secretary to fund the remainder from the error set-aside.

(ii) Projects funded in this manner will be counted against the appropriate area and applicant planning targets or set-asides as calculated on the basis of the total Local Public Works Act authorization.

(3) In exercising its privilege of prioritizing projects, an applicant shall be under no obligation to request priority for any project which may have been previously denied in error, but such choice of another or other projects shall be deemed a waiver of any claim of entitlement or priority for funding of any such project which may have been previously denied as a result of error.

(4) Projects eligible for funding under this subsection must have met all the requirements of the Local Public Works Act as in effect at the time of the error.

(5) Projects eligible for funding under this sub-section will not be funded in an amount greater than that specified in the original application.

§ 317.62 Projects selected from State-wide planning targets.

(a) *Pocket of poverty planning target.* Each primary city eligible for funding under § 317.51(a) will submit to EDA a description of its pocket of poverty area, setting forth the numbers and rates of unemployment and total population for that area. Such figures must be certified by the State Employment Security Agency. EDA will then assign a planning target to each pocket of poverty based on its relative needs as measured by its number and rate of unemployment.

(b) *State government planning target.* The Governor shall submit a priority ranking of State government projects up to the amount of the State government planning target, provided such projects are located in or primarily serve areas with unemployment rates equaling or exceeding the State's average unemployment rate or 6.5 percent, whichever is lower.

(1) EDA will select projects in accordance with the Governor's priorities up to an amount as close as is administratively feasible to the amount of the State government planning target.

§ 317.63 Projects selected from sub-State applicant planning targets.

Subject to the provisions of §§ 317.50, 317.53 and 317.55, EDA will select projects in accordance with the sub-State applicant's unified priority list of projects up to the amount of the applicant's planning target.

(1) If an applicant has already exceeded its planning target in round I, it will receive no further projects. Similarly, once an applicant has reached its planning target with a round II project, no further projects will be selected.

§ 317.64 Undue concentration.

The Assistant Secretary reserves the right to vary the selection procedure as necessary to avoid undue concentration of funds and as necessary to comply with the objectives of the Act.

§ 317.65 Similar applications.

Any application for a project which serves similar needs, in the same general area, as an existing project or application under the Local Public Works program or any other program administered by the Economic Development Administration may be denied by the Assistant Secretary for that reason.

Subpart G—General Requirements

§ 317.70 Environmental considerations.

(a) *The National Environmental Policy Act.* (1) The Local Public Works Act requires applications to be processed within 60 days of their acceptance. EDA will not be able to prepare environmental impact statements for those projects which may significantly affect the quality of the human environment. However, to the fullest extent possible within this time period, EDA will analyze a project's potential environmental impacts and give appropriate consideration to environmental impacts in making its final decisions.

(2) In order that EDA may conduct its environmental analysis of proposed projects, applicants shall include the following materials with their application:

(i) A description of those elements of the proposed project which will have an impact on the environment, the nature of the environment which will be affected, and data on the expected environmental impact;

(ii) Alternatives to the proposed project;

(iii) Any environmental analysis previously conducted by local, State, Federal agencies; and

(iv) Evidence of public reaction to the project, such as transcripts of local public hearings held on the proposal.

If the materials required by paragraphs (a)(2)(iii) and (iv) of this section are not available, the applicant must so certify in the application.

(3) EDA will independently review and analyze environmental information submitted by applicants.

(i) Where appropriate, EDA, within the 60 day limit, may seek the views of other government agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) If a project appears to be highly controversial for environmental reasons and there is a need to further understand the basis of the controversy, EDA may, within the 60 day limit, request the views of concerned residents through a newspaper notification or a public information meeting held near the project site.

(4) EDA shall deny an application if, after consideration of the benefits of a project against any environmental costs, it concludes that the environmental costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. EDA, where necessary, may condition approval of a project upon the adoption of specified measures designed to mitigate any adverse environmental impacts.

(b) *The National Historic Preservation Act.* (1) Applicants shall include with their applications either a statement of their State Historic Preservation Officer's views of the proposed project or shall certify that their State Historic Preservation Officer was provided with a detailed project description and request for comments prior to the application's submission to EDA. Such description shall include:

(i) A narrative of the elements of the project and its location;

(ii) A map of the project site and surrounding area indicating the specific location of the project site in relation to adjacent streets and other identifiable objects;

(iii) Line drawings or sketches of the project; and,

(iv) If the building demolition or renovation is involved, photographs of the affected properties.

(2) If necessary, EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation. EDA will use the results of this coordination process, even though completion of this process may not be possible, as a factor in making a final decision on the project.

§ 317.71 Compliance with other Federal requirements.

Each applicant shall, as a condition to its receipt of a grant under this part, comply with the following relevant Federal requirements.

(a) All labor standards including those relating to the payment of wages, working conditions, anti-kickback prohibitions and equal employment as provided 13 CFR 309.6.

(b) Those requirements concerning relocation and related payments to all persons displaced as a result of the development of a public works project with funds received under this part, as provided for in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., and 13 CFR Part 310.

(c) If a project involves the construction of a detention facility, the applicant must certify that the project complies with those sections of Part E of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, found at 42 U.S.C. 3750(b)(1) and (4)–(9).

(d) The provisions of OMB Circular A–95, with the following modification.

(1) Applicants must submit their full applications or notifications of intent to apply to the appropriate clearinghouse as early as possible.

(2) Upon submission of an application to EDA, the applicant must certify that it has submitted the full application to the appropriate clearinghouse.

(3) EDA may begin processing the application upon its receipt but will make no final approval of an application until 30 days after its receipt unless clearinghouse response is received before 30 days have elapsed.

(4) Applications received by EDA need not have State application identifier numbers.

(5) Clearinghouse comments will be submitted directly to EDA; EDA will consider such comments until it has finished processing the application.

(e) All environmental requirements, to the maximum extent possible, as determined by the Assistant Secretary, including, but not limited to:

(1) The National Environmental Policy Act of 1969; as amended (42 U.S.C. 4321 et seq.) and EDA's requirements found in § 317.70;

(2) The Clean Air Act, as amended (42 U.S.C. 1857–1858a);

(3) The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251–1376);

(4) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) and EDA's requirements found in § 317.70;

(5) The Wild and Scenic Rivers Act (16 U.S.C. 1271–1287);

(6) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(7) The Historical and Archeological Data Preservation Act, as amended (16 U.S.C. 469 et seq.); and

(8) The Safe Drinking Water Act (42 U.S.C. 300f–j9).

(f) 13 CFR 309.9, entitled "Records and audit."

(g) 13 CFR 309.27, entitled "Land use near Federal airfields."

(h) 13 CFR 309.26, entitled "Project modification."

(i) 13 CFR Part 314, entitled "Property management standards" except 13 CFR 314.6(a), 13 CFR 314.6(b), and 13 CFR 314.50.

(j) The National Flood Insurance Program and EDA's requirements regarding flood hazards found at 13 CFR 309.15.

(k) Other laws affecting this program.

§ 317.72 Transfer of grant awards to drought-related projects.

(a) Subject to the Assistant Secretary's approval, applicants who have been awarded a grant, or who have so prioritized a project as to be tantamount to a grant award by EDA, may request EDA to transfer the funds from the project listed on their application to one or more other projects intended to alleviate drought or other emergency or disaster related conditions or damage.

(b) The Assistant Secretary may approve such a transfer after making the following determinations:

(1) The Federal cost in the aggregate of such project or projects will not be increased beyond the cost of the original award;

(2) Construction on the project or projects proposed for substitution can begin within ninety days; and

(3) The project or projects proposed for substitution will in fact aid in alleviating drought or other emergency or disaster related conditions or damage.

(c) Section 106(a) of the Local Public Works Act and § 317.15(a) will not apply to projects substituted under the authority of this section.

§ 317.73 Lease of project facilities.

Normally, public works projects constructed with funds under this part must retain their public character. The project facility may be leased under the following conditions.

(a) The project facility may be leased by the grantee to a non-profit operator providing the applicant maintains a continuing significant economic interest in the project and is not acting simply in a passive role for a prospective lessee, and such facility is used for the purpose of the grant.

(b) The project facility may be leased by the grantee to a profit making operator provided all of the following conditions are met:

(1) The lease is incidental to the project and not its principal purpose;

(2) The lease does not change the public nature or character or the purpose of the project as a whole; and

(3) The applicant maintains a continuing significant economic interest in the project and is not acting simply in a passive role as applicant for a prospective lessee.

§ 317.74 Final determination.

(a) All applications for assistance under this part shall be processed by the appropriate EDA Regional Office.

(b) The Regional Director shall notify the applicant, in writing, when its application has been rejected and state the reasons therefor.

(c) The Regional Director shall forward to the Assistant Secretary in Washington, D.C., all applications which he deems are properly completed and eligible for assistance under this part.

(d) The Assistant Secretary shall review all applications received from the Regional Directors and make the final determination.

(e) If no determination has been made by the end of the sixtieth day after the application was received, the application will be deemed to be approved.

§ 317.75 Suspension and termination.

(a) *Suspension or termination for cause.* EDA may initiate a suspension or termination of a project approved under this part for failure by the grantee to adhere to the requirements of the grant. EDA shall promptly notify the grantee in writing of the suspension or termination, specifying the reasons for the action and its effective date. Payments made to the grantee or recoveries by EDA under grants suspended or terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(b) *Suspension or termination for convenience.* EDA or the grantee may initiate a suspension or termination of a project approved under this part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the conditions of the action, including the effective date, and in the case of partial suspension or termination, the portion to be suspended or terminated. The grantee shall not incur new obligations for the suspended or terminated portion, after the effective date, and shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the grantee for the Federal share of the non-cancellable obligations which were properly incurred by the grantee prior to suspension or termination.

Subpart H—Eligibility of Non-Profit Entities

§ 317.80 Grants for non-profit entities.

After September 30, 1977, grants may be made from appropriations under the Local Public Works Act to States or local governments for projects for the construction, renovation, repair, or other improvements of health care or rehabilitation facilities owned and operated by private non-profit entities.

(a) In the event that EDA has obligated all funds appropriated under this Act prior to or on September 30, 1977, this section will not take effect.

(Section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Pub. L. 94-369, 90 Stat. 999 (42 U.S.C. 6701); Pub. L. 95-28, 91 Stat. 116; Department of Commerce Organization Order 10-4 (September 30, 1975), as amended (40 FR 56702 as amended at 40 FR 58878 and 41 FR 35548).)

Appendix E contains a copy of Federal Management Circular FMC 74-4 which promulgates the principles and standards for determining the cost of Federal grants and contracts with State and local governments.

GENERAL SERVICES ADMINISTRATION
OFFICE OF FEDERAL MANAGEMENT POLICY

FEDERAL MANAGEMENT CIRCULAR

FMC 74-4: Cost principles applicable to grants and contracts with State and local governments

July 18, 1974

TO: HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

1. Purpose. This circular establishes principles and standards for determining costs applicable to grants and contracts with State and local governments.

2. Supersession. The President by Executive Order 11717 transferred the functions covered by this circular from the Office of Management and Budget to the General Services Administration. This circular is therefore issued as a replacement for previous Office of Management and Budget Circular No. A-87. No substantive changes have been made.

3. Policy intent. This circular provides principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. They are designed to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and the Federal Government. The principles are for determining costs only and are not intended to identify the circumstances nor to dictate the extent of Federal and State or local participation in the financing of a particular project. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

Attachment

4. Applicability and scope.

a. The provisions of this circular apply to all Federal agencies responsible for administering programs that involve grants and contracts with State and local governments.

b. Its provisions do not apply to grants and contracts with:

(1) Publicly financed educational institutions subject to Federal Management Circular 73-8; and

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

Any other exceptions will be approved by the General Services Administration in particular cases where adequate justification is presented.

5. Attachments. The principles and related policy guides are set forth in the attachments, which are:

Attachment A - Principles for determining costs applicable to grants and contracts with State and local governments

Attachment B - Standards for selected items of cost

6. Inquiries. Further information concerning this circular may be obtained by contacting:

General Services Administration (AMF)
Washington, DC 20405

Telephone: IDS 183-7747
FTS 202-343-7747

Dwight Ink

DWIGHT A. INK
Acting Administrator of General Services

(Note: This circular will be codified in the Code of Federal Regulations as 34 CFR 255.)

APPENDIX E

Federal Management Circular 74-4
Attachment A

PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH STATE AND LOCAL GOVERNMENTS

PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH STATE AND LOCAL GOVERNMENTS

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PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH STATE AND LOCAL GOVERNMENTS

A. Purpose and scope.

1. Objectives. This attachment sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. Policy guides. The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. Application. These principles will be applied by all Federal agencies in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to Federal Management Circular 73-8, and (b) publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

B. Definitions.

1. Approval or authorization of the grantor Federal agency means documentation evidencing consent prior to incurring specific cost.

2. Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. Cost objective means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. Federal agency means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

6. Grant means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this circular as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. Grant program means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. Grantee means the department or agency of State or local government which is responsible for administration of the grant.

9. Local unit means any political subdivision of government below the State level.

10. Other State or local agencies means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. Services, as used herein, means goods and facilities, as well as services.

12. Supporting services means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. Basic guidelines.

1. Factors affecting allowability of costs. To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. Allocable costs.

a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this circular may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are:

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purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of cost.

1. Total cost. The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. Direct costs.

1. General. Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. Application. Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G. of these principles.

F. Indirect costs.

1. General. Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. Grantee departmental indirect costs. All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this circular. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. Predetermined fixed rates for indirect costs. A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. Negotiated lump sum for overhead. A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. Limitation on indirect costs.

a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this circular, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this circular, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

G. Cost incurred by agencies other than the grantee.

1. General. The cost of service provided by other agencies may only include allowable direct costs of the service plus a prorata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. Alternative methods of determining indirect cost. In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. Standard indirect rate. An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. Predetermined fixed rate. A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. Cost incurred by grantee department for others.

1. General. The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

J. Cost allocation plan.

1. General. A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs

included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. Requirements. The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. Instructions for preparation of cost allocation plans. The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level and indirect cost proposals of individual grantee departments.

4. Negotation and approval of indirect cost proposals for States.

a. The Department of Health, Education, and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a., above, for the negotiation, approval, and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the General Services Administration for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. Questions concerning the cost allocation plans approved under a. and b., above, should be directed to the agency responsible for such approvals.

5. Negotiation and approval of indirect cost proposals for local governments.

a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the General Services Administration for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. Resolution of problems. To the extent that problems are encountered among the Federal agencies in connection with 4. and 5. above, the General Services Administration will lend assistance as required.

APPENDIX E

Federal Management Circular 74-4
Attachment B

STANDARDS FOR SELECTED ITEMS OF COST

July 18, 1974

APPENDIX E
FMC 74-4
Attachment B

STANDARDS FOR SELECTED ITEMS OF COST

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STANDARDS FOR SELECTED ITEMS OF COST

A. Purpose and applicability.

1. Objective. This attachment provides standards for determining the allowability of selected items of cost.

2. Application. These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Attachment A of this circular.

B. Allowable costs.

1. Accounting. The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. Advertising. Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. Advisory councils. Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. Audit service. The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. Bonding. Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. Budgeting. Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. Building lease management. The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. Central stores. The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. Communications. Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. Compensation for personal services.

a. General. Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered, (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. Payroll and distribution of time. Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls

must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. Depreciation and use allowances.

a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. Disbursing service. The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. Employee fringe benefits. Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. Employee morale, health and welfare costs. The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. Exhibits. Costs of exhibits relating specifically to the grant programs are allowable.

16. Legal expenses. The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. Maintenance and repair. Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. Materials and supplies. The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. Memberships, subscriptions and professional activities.

a. Memberships. The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. Reference material. The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. Meetings and conferences. Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. Motor pools. The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. Payroll preparation. The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. Personnel administration. Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. Printing and reproduction. Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. Procurement service. The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. Taxes. In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. Training and education. The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. Transportation. Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. Travel. Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. Costs allowable with approval of grantor agency.

1. Automatic data processing. The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. Building space and related facilities. The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. Rental cost. The rental cost of space in a privately owned building is allowable.

b. Maintenance and operation. The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. Rearrangements and alterations. Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section C.3.) are allowable when specifically approved by the grantor agency.

d. Depreciation and use allowances on publicly owned buildings. These costs are allowable as provided in section B.11.

e. Occupancy of space under rental-purchase or a lease with option-to-purchase agreement. The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. Capital expenditures. The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. Insurance and indemnification.

a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Costs of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property is unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and

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minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. Management studies. The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. Preagreement costs. Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. Professional services. Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. Proposal costs. Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable costs.

1. Bad debts. Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. Contingencies. Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. Contributions and donations. Unallowable.

4. Entertainment. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. Fines and penalties. Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. Governor's expenses. The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. Interest and other financial costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. Legislative expenses. Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. Underrecovery of costs under grant agreements. Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

APPENDIX F

Appendix F contains those attachments to Federal Management Circular 74-7 which are applicable to LPW grants. FMC 74-7 prescribes the uniform administrative requirements for grants-in-aid to State and local governments. In accordance with the Standard Terms and Conditions of LPW I and II projects, the grantee has given assurance that it shall comply with the regulations, policies, guidelines, and requirements contained in FMC 74-7. In September, 1977, FMC 74-7 was revised and reissued as Office of Management and Budget Circular A-102. There are some differences between FMC 74-7 and OMB Circular A-102, but they are minor as they affect the LPW program.

GENERAL SERVICES ADMINISTRATION
OFFICE OF FEDERAL MANAGEMENT POLICY

FEDERAL MANAGEMENT CIRCULAR

FMC 74-7: Uniform administrative requirements for grants-in-aid to State and local governments

September 13, 1974

TO: HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

1. Purpose. This circular promulgates standards for establishing consistency and uniformity among Federal agencies in the administration of grants to State and local governments. Also included in the circular are standards to ensure the consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968 (P.L. 90-577) (82 Stat. 1101).

2. Supersession. The President by Executive Order 11717 transferred the functions covered by this circular from the Office of Management and Budget to the General Services Administration. This circular is therefore issued as a replacement for Office of Management and Budget Circular No. A-102. No substantive changes have been made.

3. Background. On March 27, 1969, the President ordered a 3-year effort to simplify, standardize, decentralize, and otherwise modernize the Federal grant machinery. The standards included in the attachments to this circular replace the multitude of varying and oftentimes conflicting requirements in the same subject matter which have been burdensome to State and local governments. Inherent in the standardization process is the concept of placing greater reliance on State and local governments. In addition, the Intergovernmental Cooperation Act of 1968 was passed, in part, for the purpose of: (a) Achieving the fullest cooperation and coordination of activities among levels of Government, (b) improving the administration of grants-in-aid to the States, and (c) establishing coordinated intergovernmental policy and administration of Federal

assistance programs. This act provides the following basic policies pertaining to administrative requirements to be imposed upon the States as a condition to receiving Federal grants:

"DEPOSIT OF GRANTS-IN-AID

Sec. 202. No grant-in-aid to a State shall be required by Federal law or administrative regulation to be deposited in a separate bank account apart from other funds administered by the State. All Federal grant-in-aid funds made available to the States shall be properly accounted for as Federal funds in the accounts of the State. In each case the State agency concerned shall render regular authenticated reports to the appropriate Federal agency covering the status and the application of the funds, the liabilities and obligations on hand, and such other facts as may be required by said Federal agency. The head of the Federal agency and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to the grant-in-aid received by the States.

"SCHEDULING OF FEDERAL TRANSFERS TO THE STATES

Sec. 203. Heads of Federal departments and agencies responsible for administering grant-in-aid programs shall schedule the transfer of grant-in-aid funds consistent with program purposes and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by a State, whether such disbursement occurs prior to or subsequent to such transfer of funds, or subsequent to such transfer of funds [sic]. States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.

"ELIGIBLE STATE AGENCY

Sec. 204. · Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational

structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements."

Some of the above provisions require implementing instructions. These provisions are provided in the attachments to this circular which deal with the specific provisions.

4. Applicability and scope. The standards promulgated by this circular apply to all Federal agencies responsible for administering programs that involve grants to State and local governments. However, agencies are encouraged to apply the standards to loan and loan guarantee programs to the extent practicable. If the enabling legislation for a specific grant program prescribes policies or requirements that differ from the standards provided herein, the provisions of the enabling legislation shall govern.

5. Definitions. For the purposes of this circular:

a. The term "grant" or "grant-in-aid" means money or property provided in lieu of money paid or furnished by the Federal Government to a State or local government under programs that provide financial assistance through grant or contractual arrangements. The term does not include technical assistance programs or other assistance in the form of revenue sharing, loans, loan guarantees, or insurance.

b. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of State institutions of higher education and hospitals.

c. The term "local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, special

district, intrastate district, council of governments, sponsor group representative organization, and other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of institutions of higher education, hospitals, and school districts.

6. Attachments. The standards promulgated by this circular are set forth in the attachments, which are:

Attachment A - Cash depositories

Attachment B - Bonding and insurance

Attachment C - Retention and custodial requirements for records

Attachment D - Waiver of "single" State agency requirements

Attachment E - Program income

Attachment F - Matching share

Attachment G - Standards for grantee financial management systems

Attachment H - Financial reporting requirements

Attachment I - Monitoring and reporting program performance

Attachment J - Grant payment requirements

Attachment K - Budget revision procedures

Attachment L - Grant closeout procedures

Attachment M - Standard forms for applying for Federal assistance

Attachment N - Property management standards

Attachment O - Procurement standards

7. Requests for exceptions. The General Services Administration may grant exceptions from the requirements of this circular when exceptions are permissible under existing laws. However, in the interest of keeping maximum uniformity, deviations from the requirements of this circular will be permitted only in exceptional cases.

8. Responsibilities. The head of each Federal agency responsible for administering programs that involve grants to State and local governments will designate an official to serve as the agency representative on matters relating to the implementation of this circular. The name and title of that representative will be furnished to the Office of Federal Management Policy, GSA, not later than 30 days after receipt of this circular. If the name and title were previously transmitted to the Office of Management and Budget in connection with its OMB Circular No. A-102, notification to the Office of Federal Management Policy, GSA, is required only when there is a change in the designated representative.

9. Inquiries. Further information concerning this circular may be obtained by contacting:

General Services Administration (AMF)
Washington, DC 20405

Telephone: IDS 183-33816
FTS 202-343-3816

Dwight Ink

DWIGHT A. INK
Acting Administrator of General Services

(Note: This circular will be codified in the Code of Federal Regulations as 34 CFR 256.)

CASH DEPOSITORIES

1. Except for situations described in 2, 3, and 4, below, no grant program shall:

a. Require physical segregation of cash depositories for Federal grant funds which are provided to a State or local government.

b. Establish any eligibility requirements for cash depositories, in which Federal grant funds are deposited by State or local governments.

2. A separate bank account may be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved.

3. Any moneys advanced to the State or local governments which are determined to be "public moneys" (owned by the Federal Government) must be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage must be collaterally secure, as provided for in 12 U.S.C. 265.

4. Consistent with the national goal of expanding the opportunities for minority business enterprises, State and local governments shall be encouraged to use minority banks.

September 13, 1974 Federal Management Circular 74-7
Attachment B

BONDING AND INSURANCE

1. Except for situations described in 2 and 3, below, Federal grantor agencies shall not impose bonding and insurance requirements, including fidelity bonds, over and above those normally required by the State or local units of government.

2. A State or local unit of government receiving a grant from the Federal Government which requires contracting for construction or facility improvement shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3. Where the Federal Government guarantees the payment of money borrowed by the grantee, the Federal grantor agency may, at its discretion, require adequate bonding and insurance if the bonding and insurance requirements of a State or local government are not deemed to be sufficient to protect adequately the interest of the Federal Government.

September 13, 1974

Federal Management Circular 74-7
Attachment C

RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

1. Federal grantor agencies shall not impose record retention requirements over and above those established by the State or local governments, receiving Federal grants except that financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of three years, with the following qualifications:

a. The records shall be retained beyond the three-year period if audit findings have not been resolved.

b. Records for nonexpendable property which was acquired with Federal grant funds shall be retained for three years after its final disposition.

c. When grant records are transferred to or maintained by the Federal grantor agency, the three-year retention requirement is not applicable to the grantee.

2. The retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

3. State and local governments should be authorized, by the Federal grantor agency, if they so desire, to substitute microfilm copies in lieu of original records.

4. The Federal grantor agency shall request transfer of certain records to its custody from State and local governments when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping a Federal grantor agency may make arrangements with State and local governments to retain any records which are continuously needed for joint use.

5. The head of the Federal grantor agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents,

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papers, and records of the State and local governments and their subgrantees which are pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

6. Unless otherwise required by law, no Federal grantor agency will place restrictions on State and local governments which will limit public access to the State and local governments' records except when records must remain confidential. Following are some of the reasons for withholding records:

a. Prevent a clearly unwarranted invasion of personal privacy.

b. Specifically required by statute or Executive order to be kept secret.

c. Commercial or financial information obtained from a person or a firm on a privileged or confidential basis.

September 13, 1974

Federal Management Circular 74-7
Attachment E

PROGRAM INCOME

1. Federal grantor agencies shall apply the standards set forth in this attachment in requiring State and local government grantees to account for program income related to projects financed in whole or in part with Federal grant funds. For the purpose of this attachment, program income means gross income earned by the grant-supported activities.

2. In accordance with Section 203 of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) (82 Stat. 1101), the States and any agency or instrumentality of a State shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.

3. Units of local government shall be required to return to the Federal Government interest earned on advances of grant-in-aid funds in accordance with a decision of the Comptroller General of the United States (42 Comp. Gen. 289).

4. Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with attachment N to this circular pertaining to property management.

5. Royalties received from copyrights and patents produced under the grant during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the funds already committed to the program or deducted from total allowable project costs for the purpose of determining the net costs on which the Federal share of costs will be based. After termination or completion of the grant, the Federal share of royalties in excess of $200 received annually shall be returned to the Federal grantor agency in the absence of other specific agreements between the grantor agency and the grantee. The Federal share of royalties shall be computed on the same ratio basis as the Federal share of the total project cost.

6. All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be:

a. Added to funds committed to the project by the grantor and grantee and be used to further eligible program objectives, or

b. Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

7. Federal grantor agencies shall require the grantees to record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

MATCHING SHARE

1. This attachment sets forth criteria and procedures for the allowability and evaluation of cash and in-kind contributions made by State and local governments in satisfying matching share requirements of Federal grants.

2. The following definitions apply for the purpose of this attachment:

a. Project costs. Project costs are all necessary charges made by a grantee in accomplishing the objectives of a grant during the grant period. For matching share purposes, project costs are limited to the allowable types of costs as set forth in Federal Management Circular 74-4.

b. Matching share. In general, matching share represents that portion of project costs not borne by the Federal Government. Usually, a minimum percentage for matching share is prescribed by program legislation, and matching share requirements are included in the grant agreements.

c. Cash contributions. Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other grants may be considered as grantee's cash contributions.

d. In-kind contributions. In-kind contributions represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically identifiable to the grant program. When authorized by Federal legislation, property purchased with Federal funds may be considered as grantee's in-kind contributions.

3. General guidelines for computing matching share are as follows:

a. Matching share may consist of:

(1) Charges incurred by the grantee as project costs. Not all charges require cash outlays during the grant period by the grantee; examples are depreciation and use charges for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the grantee by other public agencies and institutions, and private organizations and individuals.

(3) Project costs represented by services and real or personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.

b. All in-kind contributions shall be accepted as part of the grantee's matching share when such contributions meet the following criteria:

(1) Are identifiable from the grantee's records;

(2) Are not included as contributions for any other federally-assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives; and

(4) Conform to other provisions of this attachment.

4. Specific procedures for the grantees in placing the value on in-kind contributions from private organizations and individuals are set forth below:

a. Valuation of volunteer services. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved program.

(1) Rates for volunteer services. Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the State or local government. In cases where the kinds of skills required for the federally-assisted activities are not found in the other activities of the

grantee, rates used should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) Volunteers employed by other organizations. When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

b. Valuation of materials. Contributed materials include office supplies, maintenance supplies, or workshop and classroom supplies. Prices assessed to donated materials included in the matching share should be reasonable and should not exceed the cost of the materials to the donor or current market prices, whichever is less, at the time they are charged to the project.

c. Valuation of donated equipment, buildings, and land, or use of space.

(1) The method used for charging matching share for donated equipment, buildings, and land may differ depending upon the purpose of the grant as follows:

(a) If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.

(b) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made; and fair rental charges for land may be made provided that the grantor agency has approved the charges.

(2) The value of donated property will be determined as follows:

(a) Equipment and buildings. The value of donated equipment or buildings should be based on the donor's cost less depreciation or the current market prices of similar property, whichever is less.

(b) Land or use of space. The value of donated land or its usage charge should be established by an independent

appraiser (i.e., private realty firm or GSA representatives) and certified by the responsible official of the grantee.

d. Valuation of other charges. Other necessary charges incurred specifically for and in direct benefit to the grant program in behalf of the grantee may be accepted as matching share provided that they are adequately supported and permissible under the law. Such charges must be reasonable and properly justifiable.

5. The following requirements pertain to the grantee's supporting records for in-kind contribution from private organizations and individuals:

a. The number of hours of volunteer services must be supported by the same methods used by the grantee for its employees.

b. The basis for determining the charges for personal services, material, equipment, buildings, and land must be documented.

STANDARDS FOR GRANTEE FINANCIAL MANAGEMENT SYSTEMS

1. This attachment prescribes standards for financial management systems of grant-supported activities of State and local governments. Federal grantor agencies shall not impose additional standards on grantees unless specifically provided for in other Attachments to this circular. However, grantor agencies are encouraged to make suggestions and assist the grantees in establishing or improving financial management systems when such assistance is needed or requested.

2. Grantee financial management systems shall provide for:

a. Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements. When a Federal grantor agency requires reporting on an accrual basis and the grantee's accounting records are not kept on that basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

b. Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

c. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

d. Comparison of actual with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.

e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Govern-

ment. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury through his commercial bank as close as possible to the time of making the disbursements.

f. Procedures for determining the allowability and allocability of costs in accordance with the provisions of FMC 74-4.

g. Accounting records which are supported by source documentation.

h. Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and administrative requirements. The grantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

i. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph 2 above.

MONITORING AND REPORTING PROGRAM PERFORMANCE

1. This attachment sets forth the procedures for monitoring and reporting program performance under Federal grants. These procedures are designed to place greater reliance on State and local governments to manage the day-to-day operations of the grant-supported activities.

2. Grantees shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

3. Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

a. A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons for slippage in those cases where established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Grantees shall submit the performance reports to grantor agencies with the Financial Status Reports, in the frequency established by Attachment H of this circular. The grantor agency shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

5. Between the required performance reporting dates, events may occur which have significant impact upon the project or program.

In such cases, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

6. If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K to this circular, the grantee shall submit a request for budget revision.

7. The grantor agency shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems.

b. Provide such technical assistance as may be required.

September 13, 1974

Federal Management Circular 74-7
Attachment K

BUDGET REVISION PROCEDURES

1. This attachment promulgates criteria and procedures to be followed by Federal grantor agencies in requiring grantees to report deviations from grant budgets and to request approvals for budget revisions.

2. The grant budget as used in this attachment means the approved financial plan for both the Federal and nonfederal shares to carry out the purpose of the grant. This plan is the financial expression of the project or program as approved during the grant application and award process. It should be related to performance for program evaluation purposes whenever appropriate and required by the grantor agency.

3. For nonconstruction grants, State and local governments shall request prior approvals promptly from grantor agencies for budget revisions whenever:

a. The revision results from changes in the scope or the objective of the grant-supported program.

b. The revision indicates the need for additional Federal funding.

c. The grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or five percent of the grant budget, whichever is greater. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the grantor agency shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

d. The grant budget is $100,000, or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of

transfers among programs, functions, and activities when budgeted separately for a grant, except that the grantor agency shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

e. The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

f. The revisions pertain to the addition of items requiring approval in accordance with the provisions of FMC 74-4.

4. All other changes to nonconstruction grant budgets, except for the changes described in paragraph 6, do not require approval. These changes include (a) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget and (b) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

5. For construction grants, State and local governments shall request prior approvals promptly from grantor agencies for budget revisions whenever:

a. The revision results from changes in the scope or the objective of the grant-supported programs.

b. The revision increases the budgeted amounts of Federal funds needed to complete the project.

6. When a grantor agency awards a grant which provides support for both construction and nonconstruction work, the grantor agency may require the grantee to request prior approval from the grantor agency before making any fund or budget transfers between the two types of work supported.

7. For both construction and nonconstruction grants, grantor agencies shall require State and local governments to notify the grantor agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee by more than $5,000 or 5 percent of the Federal grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

8. When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of FMC 74-4.

9. Within 30 days from the date of receipt of the request for budget revisions, grantor agencies shall review the request and notify the grantee whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, the grantor shall inform the grantee in writing as to when the grantee may expect the decision.

PROPERTY MANAGEMENT STANDARDS

1. This attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments. Federal grantor agencies shall require State and local governments to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this attachment are included.

2. The following definitions apply for the purpose of this attachment:

a. Real property. Real property means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. Personal property. Personal property means property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.

c. Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

d. Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. Excess property. Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs.

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3. Each Federal grantor agency shall prescribe requirements for grantees concerning the use of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

c. When the real property is no longer needed as provided in a. and b., above, the grantee shall return all real property furnished or purchased wholly with Federal grant funds to the control of the Federal grantor agency. In the case of property purchased in part with Federal grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

4. Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Federal Government or acquired with Federal funds are set forth below:

a. Nonexpendable personal property acquired with Federal funds. When nonexpendable personal property is acquired by a grantee wholly or in part with Federal funds, title will not be taken by the Federal Government except as provided in paragraph 4a(4), but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(1) The grantee shall retain the property acquired with Federal funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Federal funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall

use the property in connection with other Federal grants it has received in the following order of priority:

(a) Other grants of the same Federal grantor agency needing the property.

(b) Grants of other Federal agencies needing the property.

(2) When the grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(a) Nonexpendable property with an acquisition cost of less than $500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) All other nonexpendable property. The grantee may retain the property for its own use provided that a fair compensation is made to the original grantor agency for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the grant program to the current fair market value of the property.

(3) If the grantee has no need for the property, disposition of the property shall be made as follows:

(a) Nonexpendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of (2) (a) above, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed in accordance with (iii) below.

(b) Nonexpendable property with an acquisition cost of over $1,000. The grantee shall request disposition instructions from the grantor agency. The Federal agency shall determine whether the property can be used to meet the agency's requirement. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration (GSA) by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal grantor agency shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(i) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Federal grantor agency for such costs incurred in its disposition.

(iii) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(4) Where the grantor agency determines that property with an acquisition cost of $1,000 or more and financed solely with Federal funds is unique, difficult, or costly to replace, it may reserve title to such property, subject to the following provisions:

(a) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(b) The grantor agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Federal grant for which it was acquired. If the grantor agency fails to issue disposition instructions within 120 days, the grantee shall apply the standards of 4a(1), 4a(2)(b), and 4a(3)(b).

b. Federally-owned nonexpendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to Federally-owned property (property to which the Federal Government retains title including excess property made available by the Federal grantor agencies to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the grantor agency for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of Federal agency review.

5. The grantees' property management standards for nonexpendable personal property shall also include the following procedural requirements:

a. Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the grantor agency for its share.

b. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

c. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

d. Adequate maintenance procedures shall be implemented to keep the property in good condition.

e. Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

6. When the total inventory value of any unused expendable personal property exceeds $500 at the expiration of need for any Federal grant purposes, the grantee may retain the property or sell the property as long as he compensates the Federal Government for its share in the cost. The amount of compensation shall be computed in accordance with 4a(2)(b).

7. Specific standards for control of intangible property are provided as follows:

a. If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to the grantor agency. Unless there is prior agreement between the grantee and grantor on disposition of such items, the grantor agency shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery--including rights under any patent issued thereon--shall be allocated and administered in order to protect the public interest consistent with

"Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and Statement of Government Patent Policy as printed in 36 F.R. 16889).

b. Where the grant results in a book or other copyrightable material, the author or grantee is free to copyright the work, but the Federal grantor agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

PROCUREMENT STANDARDS

1. This attachment provides standards for use by the State and local governments in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal grant funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional requirements shall be imposed by the Federal agencies upon the grantees unless specifically required by Federal law or Executive orders.

2. The standards in this attachment do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the grantor agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

3. Grantees may use their own procurement regulations which reflect applicable State and local law, rules, and regulations provided that procurements made with Federal grant funds adhere to the standards set forth as follows:

a. The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal grant funds. Grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by State or local law, rules, or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee's officers, employees, or agents, or by contractors or their agents.

b. All procurement transactions, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. The grantee should be alert to

organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

c. The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(1) Proposed procurement actions shall be reviewed by grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by offerors should be clearly specified.

(3) Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds.

(4) The type of procuring instruments used, i.e., fixed-price contracts, cost-reimbursement contracts, purchase orders, incentive contracts, etc., shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (6) is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained, the

award shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so and when such rejections are in accordance with applicable State and local law, rules, and regulations.

(6) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(a) The public exigency will not permit the delay incident to advertising;

(b) The material or service to be procured is available from only one person or firm (All contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the grantor agency for prior approval.);

(c) The aggregate amount involved does not exceed $10,000;

(d) The contract is for personal or professional services or for any service to be rendered by a university, college, or other educational institution;

(e) The material or services are to be procured and used outside the limits of the United States and its possessions;

(f) No acceptable bids have been received after formal advertising;

(g) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental, or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial

initial investment for manufacture; or

(h) The procurements are otherwise authorized by law, rules, or regulations.

Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(7) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(8) Procurement records or files for purchases in amounts in excess of $10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(9) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract or order and to ensure adequate and timely followup of all purchases.

4. The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subgrants:

a. Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms and provide for such remedial actions as appropriate.

b. All contracts, amounts for which are in excess of $10,000, shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions by which the contract may be terminated because of circumstances

beyond the control of the contractor.

c. In all contracts for construction or facility improvement awarded in excess of $100,000, grantees shall observe the bonding requirements provided in attachment B to this circular.

d. All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

e. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

f. When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation, and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

g. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision

for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

h. Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes, or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by the Federal grantor agency. The contractor shall be advised as to the source of additional information regarding these matters.

i. All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

j. Contracts and subgrants of amounts in excess of $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the grantor agency and the Regional Office of the Environmental Protection Agency.

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